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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 42

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., APPELLANTS,

vs.

MISSOURI.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

FILED MARCH 16, 1959

JURISDICTION POSTPONED—MAY 4, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 42

LOCAL NO. 86, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., APPELLANTS,

vs.

MISSOURI.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

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IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 45869

STATE OF MISSOURI, Respondent,

v.

LOCAL NO. 8-6; OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al., Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 23, 1959

I. Notice is hereby given that Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Howard L. Carson, individually, as President of, and as member of the Negotiating Committee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; William M. LaVelle, individually, as Financial Secretary and Business Representative of, and as member of the Negotiating Committee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Joseph H. Richter, individually as Vice-President of, and as member of the Negotiating Committee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; George O. O'Brien, individually, as Sergeant-at-Arms of, and as member of the Negotiating Committee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Howard R. Kennedy, individually, as a member of the Negotiating Committee of, and as a member of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Gregory E. Brengle, indi- [fol. B] vidually, as member of the Negotiating Committee of, and as member of, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; William

T. Brengle, individually, as Trustee of, and as member of, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Lester Paolucci, Milton J. Sonderman, George E. Twellmann, and Lawrence A. Langford, each individually, and as Shop Steward, Service and Installation Department, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Wilbur L. McLaughlin, individually, as President of, and as member of the Negotiating Committee of, Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Pasco Batisto, individually, as Shop Steward, Service and Installation Department of, and as member of Negotiating Committee of, Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Benjamin Betts and Vincent Zito, each individually, as members of, and as members of Negotiating Committee of, Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Kenny J. Finnerty, individually, as President of and as member of the Negotiating Committee of, Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Joseph McDonald, individually, as Vice President of, and as member of the Negotiating Committee of Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Joseph W. Paubel, individually, and as Vice-President of, Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; Arthur E. Junghans, individually, and as International Executive Board Member of, Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; and each of the foregoing individually named persons as employees of Laclede Gas Company; Milton N. Kostedt, Earl G. Loebig, John B. Coyle, Daniel Foster, Jimmie L. Petty, Leo M. Chard, Charles J. Buccholz, Joseph E. Appelbaum, Melvin J. Tinsley, John J. Kinsella, Caesar J. Cardinale, Mar-[fol. C] garet L. Jacobs, Charles W. Seilnacht, Bernard F. Koester, Jr., Harvey A. Fritz, Paul A. Varrone, John Fragale, Harry A. Dill, Sam G. Sarantakis, Wilbert H. Klatt, Joseph Garafola, Frank H. Deachan, Jesse Diamantini, Richard M. Wynn, Adrio M. Gregg, Frank Disalvo, Sylvia A. Heidenreich, Alice E. Grosshaus, Johanna M. Windisch, Elmer Klass, Hoy E. Wisdom, Jr., Doyle B.

Duncan, Robert L. Wagstaff, Tom J. Van Dillen, Lawrence P. Billedeau, Walter H. Budde, Lester V. Pyeatt, Individually, as employees of Laclede Gas Company, and as members of Local No. 8-6, Local No. 8-109, and Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and for and on behalf of all employees of the Laclede Gas Company who are members of Local No. 8-6, Local No. 8-109, and Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO, who are too numerous to mention and who are defendants as a class in this action; Joseph Appelbaum, individually, and as Vice-President of Oil, Chemical and Atomic Workers International Union, AFL-CIO; William M. Wynn, individually, and as International Representative of Oil, Chemical and Atomic Workers International Union, AFL-CIO, appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Missouri, *en banc*, entered in this action on September 29, 1958, affirming as modified the final judgment of the Circuit Court, City of St. Louis, State of Missouri. Appellants' motion for rehearing was overruled by the Supreme Court of Missouri on November 10, 1958.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Printed transcript on appeal in this action.

[fol. D] 2. Transcript of the Record on appeal in State of Missouri, Respondent v. Local No. 8-6, Oil, Chemical and Atomic Workers of America (AFL-CIO), etc., Appellants, No. 46,664, in the Supreme Court of Missouri.

3. Opinion and judgment of the Supreme Court of Missouri, *en banc*, in this cause, filed September 29, 1958.

4. Motion of appellants for rehearing.

5. Decision of the Supreme Court of Missouri overruling Appellants' Motion for Rehearing entered November 10, 1958.

III. The following question is presented by this appeal:

Whether the National Labor Relations Act, Labor-Management Relations Act of 1947, Article VI of the Constitution of the United States and the Fourteenth Amendment preclude the State of Missouri from applying to employees of a privately owned public utility which affects interstate commerce and to their collective bargaining representatives, a state statute which provides that in the event of a threatened or actual strike the State may "take possession" of the utility and which makes it unlawful for employees of the utility after such "taking" to strike.

/s/ Morris J. Levin, 812 Olive Street, St. Louis, Missouri; /s/ Mozart G. Ratner, Jacobs and Ratner, 201 North Wells Street, Chicago, Illinois, Attorneys for Appellants.

[fol. E] Certificate of Service (omitted in printing).

[fol.] [File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

Division No. .....

September Session, 1957

No. 45,869

STATE OF MISSOURI, (Plaintiff) Respondent,

vs.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al., (Defendants) Appellants.

Appeal From the Circuit Court of the City of St. Louis, Missouri, Division No. 3, Honorable Ivan Lee Holt, Jr., Judge.

Transcript on Appeal—Filed August 23, 1957

Morris J. Levin, Donald S. Siegel, 812 Olive Street, St. Louis, Missouri, Attorneys for (Defendants) Appellants.

John M. Dalton, Attorney General, Robert R. Welborn, Assistant Attorney General, Jefferson City, Missouri; Ely, Ely & Voorhees, Wayne Ely, 611 Olive Street, St. Louis, Missouri, Attorneys for (Plaintiff) Respondent.

[fol. 1]

IN THE CIRCUIT COURT, CITY OF ST. LOUIS, STATE OF MISSOURI

No. 92,785-D—Div. No. 3

STATE OF MISSOURI, Plaintiff,

vs.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO; LOCAL NO. 8-109, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO; LOCAL NO. 8-194, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, unincorporated voluntary associations of persons with headquarters and offices at 3529 Franklin Avenue, St. Louis, Missouri; HOWARD L. CARSON, individually, as President of, and as member of the Negotiating Committee of, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; WILLIAM M. LAVELLE, individually, as Financial Secretary and Business Representative of, and as member of the Negotiating Committee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; JOSEPH H. RICHTER, individually, as Vice-President of, and as member of the Negotiating Com-

mittee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; GEORGE O. O'BRIEN, individually, as Sergeant-at-Arms of, and as member of the Negotiating Committee of Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; HOWARD R. KENNEDY, individually, as a member of the Negotiating Committee of, and as a member of, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; GREGORY E. BRENGLE, individually, as member of the Negotiating Committee of, and as member of, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; WILLIAM T. BRENGLE, individually, as Trustee of, and as member of, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; LESTER PAOLUCCI, MILTON J. SONDERMAN, GEORGE E. TWELLMANN, and LAWRENCE A. LANGFORD, each individually, and as Shop Steward, Service and Installation Department, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO; WILBUR L. MCLAUGHLIN, individually, as President of, and as member of the Negotiating Committee of, Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO; PASCO BATISTO, individually, as Shop Steward, Service and Installation Department of, and as member of Negotiating Committee of, Local No. 8-109 Oil, Chemical and Atomic Workers International Union, AFL-CIO; BENJAMIN BETTS and VINCENT ZITO, each individually, as members of, and as members of Negotiating Committee of, Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO; KENNY J. FINNERTY, individually, as President of and as member of the Negotiating Committee of, Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; JOSEPH MCDONALD, individually, as Vice-President of, and as member of the Negotiating Committee of Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; JOSEPH W. PAUBEL, individually, and as Vice-President of, Local [fol. 2] No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; ARTHUR E. JUNGHANS, individually, and as International Executive Board Mem-

ber of, Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO; and each of the foregoing individually named persons as employees of Laclede Gas Company; MILTON N. KOSTEDT, EARL G. LOEBIG, JOHN B. COYLE, DANIEL FOSTER, JIMMIE L. PETTY, LEO M. CHARD, CHARLES J. BUCHHOLZ, JOSEPH E. APPELBAUM, MELVIN J. TINSLEY, JOHN J. KINSELLA, CAESAR J. CARDINALE, MARGARET L. JACOBS, CHARLES W. SEILNACHT, BERNARD F. KOESTER, JR., HARVEY A. FRITZ, PAUL A. VARRONE, JOHN FRAGALE, HARRY A. DILL, SAM G. SARANTAKIS, WILBERT H. KLATT, JOSEPH GARAFOLA, FRANK H. DEACHAN, JESSE DIAMANTINI, RICHARD M. WYNN, ADRIO M. GREGG, FRANK DISALVO, SYLVIA A. HEIDENREICH, ALICE E. GROSSHAUS, JOHANNA M. WINDISCH, ELMER KLASS, HOY E. WISDOM, JR., DOYLE B. DUNCAN, ROBERT L. WAGSTAFF, TOM J. VAN DILLEN, LAWRENCE P. BILLEDEAU, WALTER H. BUDDE, LESTER V. PYEATT, INDIVIDUALLY, AS employees of Laclede Gas Company, and as members of Local No. 8-6, Local No. 8-109, and Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and for and on behalf of all employees of the Laclede Gas Company who are members of Local No. 8-6, Local No. 8-109, and Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO, who are too numerous to mention and who are made defendants as a class in this action; JOSEPH APPELBAUM, individually, and as Vice-President of Oil, Chemical and Atomic Workers International Union, AFL-CIO; WILLIAM M. WYNN, individually, and as International Representative of Oil, Chemical and Atomic Workers International Union, AFL-CIO, Defendants.

TRANSCRIPT OF THE RECORD

PETITION FOR INJUNCTION

Comes now the State of Missouri, in its sovereign right, by John M. Dalton, as Attorney General for the State of Missouri, acting in that behalf, and informs the court and charges as follows:

1. That the defendants Local No. 8-6, Local No. 8-109 and Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO, also known as Oil, Chemical and Atomic Workers of America (AFL-CIO), are and were at all material dates herein unincorporated voluntary associations of persons, with headquarters and offices at 3529 Franklin Avenue, in the City of St. Louis, Missouri, and are usually and commonly known as labor unions or [fol. 3] labor organizations, that said local unions will hereinafter sometimes be referred to as "Local No. 8-6," "Local No. 8-109," and "Local No. 8-194," respectively, and will hereinafter sometimes be referred to collectively as "the Unions"; that Local No. 8-6 is the bargaining representative of a large number of employees of the Laclede Gas Company, the employees represented by said Union being most of the employees other than clerical employees; that Local No. 8-194 is the bargaining representative of a large additional number of employees of the Laclede Gas Company, the employees represented by said Union being largely clerical employees; that Local No. 8-109 has as its members certain supervisory employees of the Laclede Gas Company;

2. That at all material dates herein the defendants Howard L. Carson, William M. LaVelle, Joseph H. Richter and George O. O'Brien, respectively, were President, Financial Secretary and Business Representative, Vice-President and Sergeant-at-Arms of, and together with defendants Howard R. Kennedy and Gregory E. Brengle, Members of the Negotiating Committee of Local No. 8-6; defendant William T. Brengle was Trustee of, and defendants Lester Paolucci, Milton J. Sonderman, George E. Twellman and Lawrence A. Langford were Shop Steward, Service and Installation Department, of Local No. 8-6; that the defendant Wilbur L. McLaughlin was President of, the defendant Pasco Batisto was Shop Steward, Service and Installation Department of, and, together with defendants Benjamin Betts and Vincent Zito, were members of the Negotiating Committee of, Local No. 8-109, the defendants Kenny J. Finnerty, Joseph McDonald, Joseph W. Paubel and Arthur E. Junghans were, respectively, President, Vice-President, and International Executive Board Members of, Local No. 8-194, and defendants Finnerty and

McDonald were also members of the Negotiating Committee of Local No. 8-194; that at all material dates herein [fol. 4] the foregoing individual defendants were also employees of the Laclede Gas Company; the defendants Joseph Appelbaum and William M. Wynn were, respectively, International Vice-President and International Representative of the Oil, Chemical and Atomic Workers International Union, AFL-CIO; that the aforementioned individual defendants will hereinafter sometimes be referred to as "Officers";

3. That at all material dates herein the defendants Milton N. Kostedt, Earl G. Loebig, John B. Coyle, Daniel Foster, Jimmie L. Petty, Leo M. Chard, Charles J. Buchholz, Joseph E. Appelbaum, Melvin J. Tinsley, John J. Kinsella, Caesar J. Cardinale, Margaret L. Jacobs, Charles W. Seilnacht, Bernard F. Koester, Jr., Harvey A. Fritz, Paul A. Varrone, John Fragale, Harry A. Dill, Sam G. Sarantakis, Wilbert H. Klatt, Joseph Garafola, Frank H. Deachan, Jesse Diamantini, Richard M. Wynn, Adria M. Gregg, Frank Disalvo, Sylvia A. Heidenreich, Alice E. Grosshaus, Johanna M. Windisch, Elmer Klass, Hoy E. Wisdom, Jr., Doyle B. Duncan, Robert L. Wagstaff, Tom J. Van Dillen, Lawrence P. Billedeau, Walter H. Budde, Lester V. Pyeatt, were employees of Laclede Gas Company, and members of either Local No. 8-6, Local No. 8-109 or Local No. 8-194;

4. That all of the employees of the Laclede Gas Company who are members of and affiliated with said Local No. 8-6, Local No. 8-109, and Local No. 8-194, had and have a joint and common interest in the labor dispute, work stoppage and strike hereinafter referred to, with the persons and individuals specifically named as defendants herein; that the employees of said Laclede Gas Company who are members of and affiliated with said Locals No. 8-6, 8-109 and 8-194 are too numerous in number to be made parties to this action, and the persons and individuals specifically named, including the above-named officers, have been fairly chosen and adequately and fairly rep- [fol. 5] resent the class of all persons similarly employed or situated and are therefore joined as defendants individually

and as representatives of the class of all members of the aforesaid local unions and of all employees of the Laclede Gas Company who are engaged in the labor dispute, work stoppage and strike hereinafter referred to; said defendant employees will hereinafter sometimes be referred to as "the Employees";

5. That defendant Kenny Finnerty has and maintains his place of residence at 4040 Cleveland Avenue in the City of St. Louis, Missouri; that, except for defendant Joseph Appelbaum, all of the defendants individually named in this action are residents of the State of Missouri; that approximately all of the defendants named herein as a class are residents of the State of Missouri;

6. That the Laclede Gas Company above named (sometimes referred to as "The Company") is and was at all material dates a corporation organized and existing by virtue of the laws of the State of Missouri, under governmental franchise issued and authorized by the laws of said State, transacting the business of a public utility by distributing, selling and furnishing gas in the State of Missouri to the public generally in the City and County of St. Louis, Missouri, and so engaged is and was furnishing a life essential as described and referred to by Chapter 295 of the Revised Statutes of Missouri, 1949; that at all material dates and in the business of distributing, selling and furnishing gas aforesaid, said Laclede Gas Company owned, operated or had in use a gas distribution system which included approximately 2,700 miles of mains in the City of St. Louis and St. Louis County, Missouri, and said Laclede Gas Company furnished gas to approximately 365,000 commercial and domestic customers, all within the State of Missouri, including the City of St. Louis and St. Louis County, Missouri.

[fol. 6] 7. That at and prior to all material dates herein said Laclede Gas Company employed in the business of distributing, selling and furnishing gas aforesaid, and in the transaction of its business as a public utility within the State of Missouri, a large number of persons who are and were members of the defendant Unions, and of and among

said employees were each and all of the persons and individuals named as defendants herein (except defendants Wynn and Joseph Appelbaum), and all of such employees of the Laclede Gas Company affiliated with said Unions, including the persons and individuals named as defendants herein, at all material dates in this petition set out or referred to, are and were engaged and participating in a labor dispute, work stoppage and strike hereafter referred to;

8. That all of the gas aforesaid was distributed, sold and furnished by the Company within the State of Missouri, and to the inhabitants thereof, extending throughout the City of St. Louis and into St. Louis County in said State; that all of the work and labor done and performed by the Employees was done and performed as a part of the distribution, sale and furnishing of gas by the Company and was done and performed within the State of Missouri;

9. That on the 1st day of July, 1955, the defendant Employees of the Company who are members of the defendant Unions did fail, refuse and cease to work for and on behalf of the Company in its business as a public utility in distributing, selling and furnishing gas, aforesaid, and did go out on strike as against employment by, and performing work for and on behalf of, the Company in distributing, selling and furnishing said gas service, all as the result of a labor dispute;

10. That the acts, conduct and omissions of such Employees in ceasing such work and labor and refusing to [fol. 7] perform work and labor for the Company, as aforesaid, and in going out on strike, as aforesaid, were called, incited and supported by said defendant Unions and said defendant Officers, and such acts, conduct and omissions have threatened the effective operation in Missouri of the business of the Company as a public utility in distributing, selling and furnishing gas;

11. That such acts, conduct and omissions on the part of said Employees and the defendant Unions and defendant Officers threaten to interrupt the operation of the

Company as a public utility in distributing, selling and furnishing gas, aforesaid, and as a result of such acts, conduct and omissions of the defendant Employees and the defendant Unions and the defendant Officers and the threatened interruption, resulting therefrom, of the operation of the Company in distributing, selling and furnishing gas, aforesaid, the public interest, health and welfare of the people of the State of Missouri is jeopardized and threatened;

12. That pursuant to the matter and things alleged aforesaid, and because of the acts, conduct and omissions on the part of said Employees, and the Unions and the Officers, as alleged and set forth in paragraphs 9, 10 and 11 hereof, Phil M. Donnelly, as Governor of the State of Missouri, on the 5th day of July, 1956, by virtue of the authority of Chapter 295 of the laws referred to aforesaid, did issue his Proclamation, a copy of which is attached hereto as Exhibit "A" and made a part hereof, wherein he declared that the public health and welfare are jeopardized because of the acts, conduct and omissions on the part of Employees and the Unions, aforesaid, and wherein he did further declare that the exercise of the authority vested in him by Chapter 295, and particularly Section 295.180 of the Revised Statutes of Missouri, 1949, is necessary to insure the operation in Missouri of the Company;

13. That on the same day, to-wit, July 5, 1956, Phil M. Donnelly, as Governor of the State of Missouri, by virtue [fol. 8] of the authority of Chapter 295 of the Revised Statutes of Missouri, 1949, and especially Section 295.180 of the Revised Statutes of Missouri, 1949, did issue his Executive Order No. 1, a copy of which is attached hereto as Exhibit "B" and made a part hereof, wherein he took possession of the plants, equipment and all facilities of the Company, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 4:00 o'clock P. M., Central Standard Time, July 5, 1956;

14. That on the 5th day of July, 1956, said Phil M. Donnelly, Governor of the State of Missouri, under and by virtue of the authority vested in him by the Constitution

of Missouri and statutes thereof, including Section 295.180 of the Revised Statutes of Missouri, 1949, in order to insure the continuation of the operation of the Company in Missouri, and because of the acts, conduct and omissions of the Employees, and the Unions and the Officers, as stated and set forth in paragraphs 9, 10 and 11 hereof, did take immediate possession of the plants, equipment and facilities of said Laclede Gas Company for the use and operation thereof by the State of Missouri in the public interest;

15. That upon taking possession of the plants, equipment and facilities of the Company by Phil M. Donnelly, Governor of the State of Missouri, said Employees, and the Unions and the Officers, herein have continued the labor dispute, aforesaid, and have unlawfully continued to and do fail and refuse to perform work or labor for and on behalf of the State of Missouri in the distributing, selling and furnishing of gas, as aforesaid, through the plants, equipment and facilities of the Company to the customers of said Company and to the people generally in the State of Missouri; that thus and thereby has been caused an actual interruption of the distribution, sale and furnishing of gas to certain of the customers of the Company and that thus and thereby has been caused a [fol. 9] threatened interruption of the effective operation of the business of the Company as a public utility in distributing, selling and furnishing gas in the State of Missouri, as aforesaid; that the threatened interruption of the furnishing of such gas service through the plants, equipment and facilities of the Company and the refusal of said Employees to perform work and labor for and on behalf of the State of Missouri in the distribution, sale and furnishing of such gas jeopardizes and threatens the public interest, health and welfare of the State of Missouri and of the citizens and inhabitants thereof;

16. That the defendant Unions, defendant Officers, and defendant Employees have jointly and severally called, incited, supported and participated in such strike and concerted refusal to work which resulted in a work stoppage at said Company which was still in effect at the time of filing this petition;

17. That Chapter 295 of the Revised Statutes of Missouri, 1949, and especially Section 295.200, makes such action on the part of the Unions and Officers in calling, inciting, supporting and participating in said strike and concerted refusal to work for the State of Missouri unlawful;

18. That the Employees, including the named individual defendants herein, the Unions and the Officers, will continue inciting, supporting and participating in as a joint and common cause, the labor dispute, work stoppage and strike aforesaid, and refusal to work for and on behalf of the State of Missouri in distributing; selling and furnishing the gas aforesaid through the plants, equipment and facilities of the Company, unless restrained and enjoined by the order and judgment of this court.

Wherefore, the State of Missouri, named as Plaintiff herein, in its sovereign right, prays the court:

[fol. 10] (1) That upon the filing of this petition in this court this court issue its temporary restraining order restraining and enjoining the defendant Unions, Officers and Employees, including the individually named defendants herein and all persons in active concert or participation therein, pending the further order of this court, from continuing, inciting, supporting and participating in the work stoppage, refusal to work and the strike aforesaid against the Laclede Gas Company or the State of Missouri;

(2) That with or without issuing its temporary restraining order as prayed above, and with or without an order to show cause, this court issue its temporary injunction restraining and enjoining the defendant Unions, Officers and Employees, including the individually named defendants and all persons in active concert or participation therein, from doing any of the things mentioned in paragraph 1 of this prayer, and further ordering the defendant Employees to perform the work and labor necessary for and on behalf of the State of Missouri, through the plants, equipment and facilities of the Laclede Gas Company, to continue and furnish the gas aforesaid, as furnished by the Laclede Gas Company, until the further order of this court, and that all and every person, their agents, servants and

attorneys be enjoined and restrained from in anywise interfering with said Employees in the performance of said duties to and through the State of Missouri;

(3) That upon final hearing of this cause this Court permanently restrain and enjoin the defendants and other persons above mentioned from doing any of the things mentioned in paragraph 1 of this prayer, and further order the defendant Employees to perform the work and labor necessary for and on behalf of the State of Missouri, through the plants, equipment and facilities of the Laclede Gas Company to continue and furnish the gas aforesaid, as furnished by the Laclede Gas Company, and that all and every person, their agents, servants and attorneys be per-
[fol. 11] manently enjoined and restrained from in anywise interfering with said Employees in the performance of said duties to and through the State of Missouri;

(4) Plaintiff prays for such other and further relief in the circumstances as may be just and proper.

John M. Dalton, Attorney General of Missouri; Robert R. Welborn, Assistant Attorney General of Missouri; Ely, Ely and Voorhees, Wayne Ely, Attorneys for Plaintiff.

(Petition verified.)

"Exhibit A" to Petition

Proclamation

Whereas, after investigation, I find that there is a labor dispute existing between the Laclede Gas Company, a public utility distributing, selling and furnishing gas in the State of Missouri and Local No. 8-6, Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194, Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109, Oil, Chemical and Atomic Workers of America (AFL-CIO), recognized bargaining agents of the employees of the Laclede Gas Company; and

Whereas, after investigation, I find that as a result of such labor dispute there is an actual strike on the part of

the employees in Missouri of the Laclede Gas Company who are members of Local No. 8-6, Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194, Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109, Oil, Chemical and Atomic [fol. 12] Workers of America (AFL-CIO), which threatens the effective operation in Missouri of the Laclede Gas Company, a public utility; and

Whereas, after investigation, in my opinion such strike threatens to interrupt the operation in Missouri of the Laclede Gas Company; and

Whereas, after investigation, in my opinion the public interest, health and welfare are jeopardized;

Now, Therefore, I, Phil M. Donnelly, Governor of Missouri, under and by virtue of the authority vested in me by the Constitution of Missouri and the statutes, including Chapter 295, and particularly Section 295.180 of the Revised Statutes of Missouri 1949, do hereby proclaim as follows:

(1) That the continued operation of the Laclede Gas Company, a public utility, is threatened as the result of a labor dispute.

(2) That interruption of the operation of the Laclede Gas Company, a public utility, is threatened as the result of a strike on the part of employees of the Laclede Gas Company who are members of Local No. 8-6, Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194, Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109, Oil, Chemical and Atomic Workers of America (AFL-CIO).

(3) That the public interest, health and welfare are jeopardized as a result of the threatened interruption of the operation of such public utility.

(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180 of the Revised Statutes of Missouri 1949, is necessary to insure the operation in Missouri of the Laclede Gas Company, a public utility.

[fol. 13] In Witness Whereof I have hereunto set my hand and caused the Great Seal of the State of Missouri to be hereto affixed on this 5th day of July, 1956.

/s/ Phil M. Donnelly,
Governor.

Attest:

/s/ Walter Toberman,
Secretary of State.

/s/ Will Davis,
Chief Clerk.

"Exhibit B" to Petition

Executive Order No. 1

To The Secretary of State:

Whereas, there is a labor dispute existing between the Laclede Gas Company, a public utility distributing, selling, and furnishing gas in the State of Missouri, and Local No. 8-6 Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194 Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109 Oil, Chemical and Atomic Workers of America (AFL-CIO), recognized bargaining agents of the employees of the Laclede Gas Company; and

Whereas, as a result of such labor dispute there is an actual strike on the part of the employees in Missouri of the Laclede Gas Company who are members of Local No. 8-6 Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194 Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109 Oil, Chemical and Atomic Workers of America (AFL-CIO), which threatens the effective operation in Missouri of the Laclede Gas Company, a public utility; and

[fol. 14] Whereas, in my opinion such strike threatens to interrupt the operation in Missouri of the Laclede Gas Company; and

Whereas, in my opinion the public interest, health and welfare are jeopardized; and

Whereas, after investigation, I, Phil M. Donnelly, Governor of Missouri, by Executive Proclamation dated the 5th day of July, 1956, proclaimed:

(1) That the continued operation of the Laclede Gas Company, a public utility, is threatened as the result of a labor dispute.

(2) That interruption of the operation of the Laclede Gas Company, a public utility, is threatened as the result of a strike on the part of employees of the Laclede Gas Company who are members of Local No. 8-6 Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194 Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109 Oil, Chemical and Atomic Workers of America (AFL-CIO).

(3) That the public interest, health and welfare are jeopardized as the result of the threatened interruption of the operation of such public utility.

(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1949, is necessary to insure the operation in Missouri of the Laclede Gas Company, a public utility.

Now, Therefore, I, Phil M. Donnelly, Governor of the State of Missouri, by virtue of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1949, do hereby order as follows:

[fol. 15] I hereby take possession of the plants, equipment, and all facilities of the Laclede Gas Company, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at four o'clock, P. M., Central Standard Time, Thursday, July 5, 1956.

Done this 5th day of July, 1956.

(s) Phil M. Donnelly,
Governor.

Attest:

(s) Walter Toberman,
Secretary of State.

Will Davis,
Chief Clerk.

Filed July 9, 1956.

In Circuit Court of the City of St. Louis

Order to Show Cause—July 9, 1956

On July 9, 1956 the court entered of record the following order to show cause:

Upon presentation to the court of the verified petition of the plaintiff in the above-entitled cause, it is hereby Ordered that the defendants in the above-entitled cause show cause on the 11th day of July, 1956, at 10:00 o'clock A. M., why a temporary injunction should not be granted as prayed in the petition in said cause.

Ivan Lee Holt, Jr., Judge of the Circuit Court.

In Circuit Court of the City of St. Louis

Defendants' Return to Order to Show Cause and Motion to Dismiss—Filed July 11, 1956

Now come the defendants herein, being all the defendants named in plaintiff's petition, and for their return to the Order to Show Cause issued herein why a temporary in-[fol. 16] junction should not be granted as prayed in the said petition respectfully state as follows:

1. Defendants admit all of the allegations contained in Paragraphs 1, 2, 3, 4 and 5 of said petition.

2. Defendants further state that the defendant unions are voluntary unincorporated associations of persons and that each of them is a labor union or labor organization within the meaning of the Labor-Management Relations

Act, 1947; that said defendant unions are the collective bargaining agents for most of the employees of the Laclede Gas Company, in accordance with certifications issued by the National Labor Relations Board pursuant to the provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended. Local 8-6 has been duly certified as the exclusive bargaining agent for the purposes of bargaining in respect to rates of pay, wages, hours of work and other conditions of employment for the Company's employees in the Manufacturing Department, Service and Installation Department, Street Department, Meter Reading Department, and the departments designated respectively as Store Room, Garage, Meter Repair Shop and Building Service, all as more particularly described in and on pages 63 to 74, inclusive, in the Labor Agreement hereto attached and marked and identified as Exhibit "A", said certification having been made by the National Labor Relations Board on November 24, 1948; as amended by the new certification made by said National Labor Relations Board on September 27, 1955, in Case No. 14-RE-18. Said Local 8-194 has been duly certified as the exclusive bargaining agent for the purposes of bargaining in respect to rates of pay, wages, hours of work and other conditions of employment for the Company's office and clerical employees and those others specifically mentioned in the following departments: Accounting, Cashier and Mailing, Collection and Credit, Customers' Accounting, Customers' Advisers, Payroll, Pur-[fol. 17] chasing, Stationery and Printing, Sales and Sales Engineers, Meter Reading, Manufacturing, including Assistant Chemists and Clerks, Service and installation, Drafting, Street, Telephone Contact, including PBX Operators, and the departments designated respectively as Control, Store Room, Garage, Meter Repair Shop, Brentwood Office and Budget Department (Budget Clerk only); said certification of Local 8-194 was duly made by the National Labor Relation Board on June 8, 1944 and thereafter duly amended in Case No. 11-R-982 on September 27, 1955. Local 8-109 was duly certified by said National Labor Relations Board as the sole and exclusive collective bargaining agent for the employees represented by it following an

election duly held and conducted by said National Labor Relations Board.

Pursuant to said certifications the defendant unions are and at all times material hereto have continued to be the sole and exclusive collective bargaining agents of said above described employees of Laclede Gas Company representing approximately 2200 employees of said Laclede Gas Company engaged directly in the manufacturing and distribution of the gas sold by said Company and in the construction, maintenance and repair of the plants, properties and facilities of said Company and in the performance of the office and clerical duties and all other activities related to the foregoing.

3. Defendants admit the allegations contained in Paragraph 6 of plaintiff's petition, and for further answer defendants state that Laclede Gas Company operates a gas utility engaged in the distribution and sale of natural gas throughout the City of St. Louis and approximately 130 square miles of the adjacent suburban areas in St. Louis County, Missouri. The Company sells natural gas to businesses and enterprises directly engaged in the production of goods that move in interstate commerce. During the year ending December 31, 1955, the Company had Total Oper- [fol. 18] ating Revenues of $41,416,789, all of which, except for $724,937, was derived from the sale of gas; that in that same period Laclede Gas Company sold gas to industrial consumers in an amount of $4,819,988, practically all of which was sold to customers engaged in the production of goods for commerce and in the same period an additional amount of $1,910,038 of natural gas was sold to other industrial users on an interruptable basis and all of said customers purchasing the said gas were engaged in the production of goods for commerce. During the calendar year 1955 the Company purchased all of its natural gas from the Mississippi River Fuel Corporation, which supplied said gas from the Carthage Field of Texas into Perryville, Louisiana, and thence to the City of St. Louis and environs. Said purchases of gas by the Company during the year 1955 and shipped to it from outside the State of Missouri amounted to an aggregate of $16,156,481. The Company is engaged in activities affecting commerce

and is and was at all times herein mentioned engaged in interstate commerce within the meaning of the Labor-Management Relations Act, 1947, and is subject to the jurisdiction of the National Labor Relations Board, which has consistently and regularly asserted and exercised jurisdiction over it and the defendants herein named.

4. Defendants admit the allegations contained in Paragraph 7 of plaintiff's petition.

5. Defendants neither admit nor deny the allegations contained in Paragraph 8 of plaintiff's petition, but aver that the Company is and was at all times mentioned herein engaged directly in activities affecting commerce and is and was at all times herein mentioned engaged in interstate commerce within the meaning of the Labor-Management Relations Act, 1947, and is and was at all times mentioned herein subject to the jurisdiction of the National Labor Relations Board in all of its collective bargaining [fol. 19] relations with the Union defendants herein, their members and all of the defendants herein named.

6. Defendants admit all the allegations contained in Paragraph 9 of plaintiff's petition, but aver that each of the Local Unions has for many years had written collective bargaining contracts with Laclede Gas Company, covering the wages, hours and conditions of employment of the employees of said Company represented by these defendants; that the last contracts executed by and between these defendant Unions and said Laclede Gas Company all expired by their terms on June 30, 1956; that these defendant Unions have in good faith been attempting to bargain with said Laclede Gas Company prior to and since June 30, 1956, for the negotiation and execution of new collective bargaining contracts governing the wages, hours and conditions of employment of the workers represented by said defendant Unions, but no new agreement has been entered into nor executed by the parties.

7. Your defendants further state that each of said Local Unions did more than sixty days prior to the expiration date of their last contracts with the Company, give notice of changes desired by them in the terms and conditions of

their collective bargaining contracts, all as required by the provisions of the Labor-Management Relations Act, 1947. In like manner, said Laclede Gas Company, in purported compliance with the Labor-Management Relations Act, 1947, to which it was and is subject, gave written notice to these defendant Unions purporting to terminate its said collective bargaining contracts with these defendant Unions as of June 30, 1956.

8. Due notice prepared in the form required and in compliance with Section 8 (d) (3) of the National Labor Relations Act was served on the Federal Mediation and Conciliation Service of changes desired by the defendant Unions in their collective bargaining contracts with Laclede Gas [fol. 20] Company and at the same time the State Board of Mediation of the State of Missouri was served with notice of requests for changes in the collective bargaining agreement expiring June 30, 1956 and of the existence of a labor dispute between these defendant Unions and Laclede Gas Company.

9. Defendants deny all the allegations contained in Paragraphs 10 and 11 of plaintiff's petition, but aver that following the attempts of these defendant Unions and their officers and representatives to bargain in good faith with Laclede Gas Company and the inability to arrive at acceptable terms and conditions to be incorporated in new collective bargaining contracts between these defendant Unions and Laclede Gas Company, the memberships of each of the defendant Unions did, on June 25, 1956, vote to and did authorize a peaceful strike against said Laclede Gas Company to enforce the demands of these defendant Unions and their memberships for increased wages and desired changes in the hours and working conditions of their employment with said Company, and to prevent Laclede Gas Company from instituting certain changes in working conditions and practices that would adversely affect the wages, positions and security of these defendants and the memberships of these defendant Unions.

10. Defendants further state that on the expiration of the respective contracts with the Laclede Gas Company on June 30, 1956, the membership of these defendant Unions

did, on July 1, 1956, enter upon a peaceful strike against said Laclede Gas Company for the purposes aforesaid.

11. Defendants neither admit nor deny the allegations contained in Paragraphs 12, 13 and 14 of plaintiff's petition, and call upon plaintiff for strict proof thereof, but defendants deny all of the statements, allegations, declarations and claims made in the Proclamation and Executive Order identified as Exhibits "A" and "B" attached to plaintiff's petition.

[fol. 21] 12. Defendants admit that the strike lawfully called and conducted by defendants against Laclede Gas Company continued following the issuance of Proclamation and Executive Order identified as Exhibits "A" and "B", but defendants deny each and all the other allegations contained in Paragraphs 15, 16, 17 and 18 of plaintiff's petition and the conclusions therein contained, except as to the specific statutes and the language of said statutes, of which the Court will take judicial notice.

13. For their further return defendants deny that the defendant Unions of any of their numbers are now or have ever been on strike against the State of Missouri and specifically deny the allegations in plaintiff's petition that they or any of their members now or at any time have or "do fail or refuse to perform work or labor for and on behalf of the State of Missouri in the distributing, selling and furnishing of gas." Defendants state that the agent allegedly designated by Phil M. Donnelly, Governor of the State of Missouri, has expressly disclaimed any of the members of the defendant Unions as his employees or as employees of the State of Missouri, and has expressly denied that any of the members of these defendant Unions are employees of or stand in the relation of Master and servant to the State of Missouri or Phil M. Donnelly, as Governor of the State of Missouri. Defendants further deny that the State of Missouri or any of its political subdivisions has ever sought to hire, retain or employ any of these defendants or any of the members of these defendant Unions or to cause them to perform work or labor for or on behalf of the State of Missouri or any of its political subdivisions.

14. For their further return these defendants state that all of said Proclamations and actions of said Phil M. Donnelly, Governor of the State of Missouri, and his agent, Daniel C. Rogers, acting pursuant thereto, are in derogation of the rights of these defendant Unions and their mem- [fol. 22] bership, under the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments to the Constitution of the United States, and in derogation of the rights of these defendants and the members of these defendant Unions under the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution, and in deprivation of the rights of these defendants and all members of these defendant Local Unions and attempts to deny and to withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended, 61 Stat. 136 (1947), 29 U. S. C. 141 (Sup. 1950). Defendants state that they and the members of these defendant Unions are and were at all times hereinmentioned employees only of the Laclede Gas Company and at no time were they or were they intended to be by those enforcing the alleged act of seizure the employees of the State of Missouri or any political subdivision thereof in the operation of said Laclede Gas Company; that said alleged seizure by the Governor of the State of Missouri is purely nominal and did not, nor did it purport to change the status of the membership of these defendant Unions as employees of Laclede Gas Company, which at all times remained in full possession of all of its property and exercised dominion and control over all of its employees in the operation of said properties. Your defendants farther state that said purported seizure and all actions taken under and pursuant thereto is and was intended only to deprive the members of these defendant Unions, who are employed by Laclede Gas Company, of the benefits and protection of the Labor-Management Relations Act, 1947; that the said actions and the statute under which the same were taken attempt to abrogate altogether the right of the members of these defendant Unions to take collective action in their mutual aid and protection which is guaranteed to them under the Labor-Management

[fol. 23] Relations Act, 1947, and to deprive them of the benefits and protections of said Act; that said statute and all actions taken thereunder are in conflict with the exercise by the members of the defendant Unions of their Federally protected labor rights.

15. The issuance of said Proclamation and Executive Order and all said described acts and things done and performed by said Phil M. Donnelly, as Governor of the State of Missouri, and his agent, Daniel C. Rogers, were carried out pursuant to the provisions of Chapter 295 of the Revised Statutes of Missouri, 1949, hereinafter sometimes referred to as the "King-Thompson Law."

16. Defendants state that the said King-Thompson Law is unconstitutional and invalid and all actions taken thereunder by said Phil M. Donnelly, Governor of the State of Missouri, and his agent, Daniel C. Rogers, are unlawful, invalid and without any force or effect for the following reasons:

(a) Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act of 1935, as amended by the Labor-Management Relations Act of 1947, and therefore is unconstitutional and invalid because it violates Section 8 of Article I and Article VI of the Constitution of the United States.

(b) Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act and the Labor-Management Relations Act, 1947, and interferes with the purposes of said Acts to promote voluntary labor agreements through free collective bargaining.

(c) Section 295.200 of said statute, which makes it unlawful for employees of public utilities to strike, is in conflict with the Labor-Management Relations Act, 1947, and Section 13 thereof, and is in violation of Article VI of the Constitution of the United States.

[fol. 24] (d) Section 295.180 of said Law, providing that a public utility may be seized on the terms and conditions therein set forth, is in conflict with the Labor-Management

Relations Act, including, but not limited to Section 13 thereof.

(e) Sections 295.120 to 295.170, inclusive, R. S. Mo., 1949, providing for public hearing panels, is in conflict with the Labor-Management Relations Act, 1947.

(f) Section 295.200 of said Revised Statutes of Missouri, 1949, providing penalties for employees who strike in economic strikes and penalizing public utilities which refuse to bargain collectively in good faith with employees, is in conflict with and in violation of the National Labor Relations Act, including, but not limited to Sections 2 (3), 7, 8 and 13 of said Labor-Management Relations Act, 1947, and attempts to legislate on a subject and in an area fully preempted by Federal Law.

(g) Chapter 295, R. S. Mo., 1949, by its substance, terms and the purported effect thereof, is void on its face and invalid as being in conflict with Article I, Section 29 of the Constitution of Missouri, 1945, and the rights guaranteed to workers thereunder.

(h) Chapter 295.090, R. S. Mo., 1949, constitutes a denial of the right of free collective bargaining by utility employees through representatives of their own choosing; and is unconstitutional and void under Article VI of the Constitution of the United States as being in conflict with the Labor-Management Relations Act, 1947.

(i) Chapter 295, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 1 of Article II of the Constitution of Missouri, 1949, and that by the unlawful delegation of legislative powers.

(j) Sections 295.120 to 295.180, inclusive, R. S. Mo., 1949, are and constitute unlawful delegations of legislative power [fol. 25] and authority to the Governor and to the members of the panels provided for therein.

(k) Section 295.200 (1), R. S. Mo., 1949, by its terms, substance and effect, on its face is void and violates the provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First and Fourteenth

Amendments to the Constitution of the United States, and is a denial of freedom of speech and freedom of assemblage and equal protection of the laws, in violation of said Constitution.

(l) Section 295.090, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Sections 2, 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the provisions of the First and Fourteenth Amendments to the Constitution of the United States and is in conflict with the Labor-Management Relations Act of 1947.

(m) Section 295.180, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 13 of Article I of the Constitution of Missouri, 1945, and violates the provisions of Section 10 of Article I of the Constitution of the United States.

(n) Section 295.200, R. S. Mo., 1949, by its terms, substance and effect, is void on its face, and violates the provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and is in conflict with the provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended.

(o) Said Section 295.200, R. S. Mo., 1949, is a denial of the freedom of speech, freedom of assemblage and equal protection of the laws; the penal provisions thereof provide for imposition of excessive fines and the terms and sub-
[fol. 26] stance thereof impose a form of compulsory service or involuntary servitude.

(p) Said Section 295.200 (2), R. S. Mo., 1949, is an attempt to take property without due process of law, interferes with the freedom of contract and denies to all employees of utilities the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States.

(q) Chapter 295, R. S. Mo., 1949, is in conflict with various provisions of the National Labor Relations Act,

as amended, and the Labor-Management Relations Act, 1947, as amended, in that it attempts to deny and take away rights guaranteed by Sections 2 (3), 7, 8 and 13 and other provisions of said Acts.

(r) Chapter 295, R. S. Mo., 1949, is unlawful and invalid in its entirety, because it attempts to legislate and operate in a field and cover activities fully pre-empted by and covered by existing Federal Law enacted by the Congress pursuant to authority of the Constitution of the United States.

17. The Proclamation and Executive Order issued by said Phil M. Donnelly, as Governor of the State of Missouri, and the acts done and performed by said Phil M. Donnelly and his agent, Daniel C. Rogers, acting unlawfully and improperly as hereinabove set forth, affect these defendant Unions and each of their individual members adversely as employees of Laclede Gas Company and as members of these defendant Unions in denying them the enjoyment of their rights and privileges as employees and depriving them of the protection of the right of free collective bargaining guaranteed to each of them as set forth above, and said Proclamation, Order and acts were, are and constitute a continuing threat to the enjoyment of said right and privileges of these defendants and constitute a continuing impairment of the constitutional rights of these [fol. 27] defendants and members of these defendant Unions not only in the present dispute between these defendants and Laclede Gas Company, but in all future and continuing collective bargaining and collective bargaining relations affecting these defendants and all others similarly situated. Defendants further state that so long as the Governor of the State of Missouri is free or deems himself free to exercise the authority and to enforce the provisions, prohibitions and penalties provided in Chapter 295, R. S. Mo., 1949, at this time or at any time in the future, with respect to the activities of Laclede Gas Company or any other company or industry engaged in interstate commerce, or which affect interstate commerce, there cannot be the full freedom of association among the employees affected nor any equality of bargaining power, and there is and will con-

tinue to be a constant and continuing interference with and impediment to free collective bargaining as provided for and required by and protected under the provisions of the Labor-Management Relations Act, 1947, as amended; that in and under these circumstances, the defendants and each of them and the members of these defendant Unions have suffered and will continue to suffer great and irreparable injury.

Wherefore, defendants pray that the relief sought herein and every part thereof be denied and that plaintiff's petition be dismissed, at its costs, and for all other and further proper relief and order herein.

(Return verified.)'

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

Transcript of Hearing

COLLOQUY BETWEEN COURT AND COUNSEL

The hearing began on July 11, 1956, before the Honorable Ivan Lee Holt, Jr., Judge of the Circuit Court of the City of St. Louis, Missouri, Division No. 3, with Mr. Robert R. Welborn, Assistant Attorney General of Missouri, and [fol. 28] Mr. Wayne Ely, appearing for plaintiff, and Mr. Morris J. Levin appearing for defendants. The following proceedings were had:

The Court (After discussion with counsel): We will proceed on the temporary, with the understanding that if the evidence which you desire is available you will agree at the close of the evidence that the Court may take the evidence on the temporary as the evidence on the permanent injunction Is that satisfactory?

Mr. Levin: That is quite satisfactory.

The Court: Is that satisfactory to you, Mr. Welborn?

Mr. Welborn: Yes.

The Court: One thing, before you actually begin, have you entered all those other defendants?

Mr. Levin: I have, your Honor. There are appearances for all the defendants, and they have waived the service of summons and order to show cause.

The Court: One other thing, gentlemen: In so far as you can, with a view to expediting this matter, stipulate as many things as you can, so we can move ahead as rapidly as possible.

Mr. Welborn: We will endeavor to do so.

PLAINTIFF'S EVIDENCE.

Mr. Welborn: Mark that as Plaintiff's Exhibit 1.

(Thereupon a document was marked as Plaintiff's Exhibit 1.)

Plaintiff's Exhibit 2.

(Thereupon another document was marked as Plaintiff's Exhibit 2.)

OFFERS IN EVIDENCE

Mr. Welborn: If the Court please, I would like first to offer in evidence as Plaintiff's Exhibit No. 1 a certified copy of the proclamation issued by Governor Phil M. Don- [fol. 29] nelly on July 5, 1956, wherein he declared the existence of the labor dispute and the work stoppage involving the Laclede Gas Company and invoked the authority conferred upon him by Chapter 295 of the Revised Statutes Missouri, 1949.

I further offer in evidence Plaintiff's Exhibit 2, a certified copy of Executive Order No. 1 by Governor Phil M. Donnelly issued on July 5, 1956, wherein he took possession of the plants, equipment and facilities of Laclede Gas Company in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 4:00 o'clock p. m., Thursday, July 5, 1956.

Mr. Levin: No objection, and I will stipulate that those were duly served on officers of Locals 8-6, 8-109, and 8-194 of the Oil, Chemical and Atomic Workers Unions AFL-CIO; and will also stipulate that, according to the information that came to us, the same were served upon the officials of the Laclede Gas Company.

The Court: Very well, they may be received, with that stipulation.

(Said Plaintiff's Exhibit 1, offered and admitted in evidence, is set out in full, as Exhibit A to plaintiff's petition, at side page 11 of this transcript [printed page 15], and Plaintiff's Exhibit 2, offered and admitted in evidence, is set out in full, as Exhibit B to plaintiff's petition, at side page 13 of this transcript [printed page 17].)

ALLEN H. BURGESS, being sworn, testified:

Direct examination.

By Mr. Welborn:

Q. Will you state your name, please?
A. Allen H. Burgess.
Q. Where do you live, Mr. Burgess?
A. In Webster Groves.
[fol. 30] Q. Immediately prior to July 1, 1956, by whom were you employed?
A. Laclede Gas Company.
Q. What was your official position with Laclede Gas Company prior to that date?
A. Vice-President in charge of operations.
Q. When did you first begin your employment with Laclede, Mr. Burgess?
A. Would you ask that again?
Q. When did you begin your employment at Laclede Gas Company?
A. May 1, 1951.
Q. What other positions have you held with Laclede Gas, if any, other than operation vice-president?
A. I came to Laclede as general superintendent in May, 1951, and was made vice-president in charge of operations about two years ago.
Q. What, generally, is the business of Laclede Gas Company?
A. The distribution of gas to some 364,000 customers in the St. Louis area.
Q. Is there any other company in the same area conducting the same business?
A. Not in the distribution business, no.

Q. What is the nature of the gas distributed by Laclede?

A. Approximately 99% is natural gas.

Q. Would you describe to the Court generally the distribution system of the Laclede Gas Company?

A. The distribution of gas system is made up of a network of lines carrying pressures from 150 pounds, that generally loops the entire area of cross lines and lines that tie in, for better distribution; a system of pressure lines, or the feed regulators, that cut the gas pressure in our low pressure system, various size lines from 30-inch down to 1 or thereabouts, carrying pressure of approximately 5 inches water column. Most of the county system is made up of pressure lines carrying pressure from 15 to 40 pounds. The natural gas is purchased from the Mississippi River Fuel Corporation, at approximately seven points on the periphery of our system. We have four manufacturing plants where we manufacture gas for use on cold days in [fol. 31] the wintertime, when the natural gas supply has been used to its capacity. We have an underground gas storage plant in operation now. We have approximately a billion feet in storage. That makes up, generally, the distribution system.

Q. Approximately how many customers does Laclede have?

A. About 364,000.

Q. Describe generally the type of customers that Laclede has.

A. Well, we have about four types of customers—the customers that use gas for cooking, water heating, gas drying, refrigeration, and all other uses except heating in the home; we have customers that use gas for heating and all the domestic types I mentioned before; we have industrial customers that use gas for the processing of whatever they manufacture; and commercial customers that use gas for commercial cooking, water heating and other uses.

Q. Does the Laclede Gas Company have among its customers hospitals located in St. Louis and St. Louis County?

A. Yes, we have connected to our system practically all the hospitals in the St. Louis area.

Q. Do you know to what use the hospitals put the gas obtained from Laclede Gas Company?

A. Yes, they use the gas for cooking, sterilization, heating, hot water heating, and miscellaneous uses.

Q. Does Laclede Gas Company supply doctors' and dentists' offices in this area with gas?

A. Yes.

Q. Do you know approximately how many?

A. It is rather difficult to say how many doctors and dentists we supply. There are some seventy-five or eighty hospitals. I wouldn't know.

Q. Do you know what use the doctor and dentist customers put Laclede gas to?

A. My doctor and dentist puts it to sterilization purposes, hot water heating, and for the melting of materials used by dentists.

Q. Are some of the large housing projects in the St. Louis area customers of Laclede Gas?

A. Yes.

[fol. 32] Q. Which ones, Mr. Burgess?

A. All of them. The Pruitt comes to my mind now; the Pruitt Housing Development.

Q. Do you know to what use gas is put in those housing projects?

A. Yes, they use it for cooking, water heating and space heating.

Q. Approximately how many employes does Laclede have?

A. Approximately 2500.

Q. How many of the employes of Laclede Gas Company are members of Local No. 8-109 Oil, Chemical and Atomic Workers Union?

A. Approximately a hundred members of Local 109.

Q. What is the class of employes that belong to Local 8-109?

A. Local 109 are the foremen—the first line of supervision.

Q. How many employes of Laclede Gas Company are members of Local 8-194 of the Oil, Chemical and Atomic Workers Union?

A. I don't know exactly. Approximately four hundred.

Q. What is the nature of their work?

A. Local 194 are clerical workers.

Q. How many of the employes are members of Local 8-6 of Oil, Chemical and Atomic Workers?

A. Approximately seventeen hundred.

Q. What is the general nature of their work?

A. Local 6 are known as physical workers, that do all the construction, maintenance and operating work assigned to them.

Q. How many non-union employes has Laclede Gas Company?

A. Approximately three hundred.

Q. What is the general nature of their duties?

A. Their work is supervisory generally, and also includes the engineering staff, the head of the purchasing department; general supervising and engineering staff, and some salesmen.

Q. Did you participate in bargaining meetings with representatives of Local 8-109, 8-194 and 8-6 of the Oil, Chemical and Atomic Workers prior to July 1, 1956?

[fol. 33] A. Yes. I only sat in about three or four meetings during the negotiations.

Q. What was the last meeting prior to July 1, 1956, in which you participated?

A. I sat in the meeting the afternoon of June 30th.

Q. Were you on duty for the Laclede Gas Company at 12:00 o'clock midnight between June 30th and July 1, 1956?

A. Yes.

Q. Where were you at that time, Mr. Burgess?

A. I went to our Forest Park office, which is at 3940 Forest Park Boulevard, our operating headquarters.

Q. Describe generally the function which that office at that location serves?

A. This is where the operating supervision have their offices, headquarters, and all of the operations are directed out of its headquarters.

Q. At or shortly after 12:00 o'clock midnight on June 30, 1956-July 1, 1956, what, if anything, occurred at the Forest Park office with respect to work stoppage?

A. All of the men on duty walked out and pickets appeared at the Forest Park location.

Q. What, if anything, occurred throughout the Laclede system with respect to the failure to work?

A. We had calls from all of our plants throughout the area that the men had left their job that belonged to a union and picket lines were set up at all our plants and all our locations at which we had non-contract men.

Q. How many locations are there at which pickets appeared, do you know?

A. Yes, I can name them.

Q. Please.

A. Station A; Station B; Catalan Street Station; Shrewsbury Station; Station G, a holder station; Station N, a holder station; Meter Shop on California and Gravois and our underground storage in North St. Louis County; also our offices at 1017 Olive Street and Forest Park.

Q. Do you know approximately how many employes of Laclede Gas Company participated in that strike, Mr. Bur[fol. 34] gess?

A. All I know is all contract personnel were not working. There are some twenty-two hundred of them.

Q. Are the employes who were on strike members of Local No. 8-109, 8-194 and 8-6?

Mr. Levin: I have already stipulated to all that—that they were.

Mr. Welborn: All right, I will accept your stipulation, in lieu of further evidence on that.

Q. Mr. Burgess, after July 1, 1956, how many employes continued to work for Laclede Gas?

A. Approximately three hundred non-contract employes.

Q. Were they generally supervisory employes?

A. Yes, generally.

Q. Mr. Burgess, prior to July 5, 1956, did you, in the regular course of your official duties at the Laclede Gas Company, receive reports of interference with the operation of Laclede Gas Company subsequent to midnight July 1, 1956?

Mr. Levin: I object to any questions along those lines, being clearly hearsay, no foundation laid.

The Court: What is your theory?

Mr. Welborn: That these are reports which were received in the regular course of the business of the operation of the Laclede Gas Company, which were acted upon by the offi-

cials of the Laclede Gas Company in the conduct of their business. It is my theory that on such basis they are not hearsay testimony and are admissible.

Mr. Levin: There is no evidence what the reports were—whether oral or written. If they are written they should be here. I think it is hearsay, regardless of in what capacity he received them, unless some better foundation is laid. Nothing to show this witness in the normal course of operations would even receive them.

The Court: The objection will be sustained with leave to lay a further foundation, if you desire, Mr. Welborn.

By Mr. Welborn:

Q. I will ask you whether or not, in the regular course of your business of Laclede Gas Company, it was your duty to [fol. 35] receive reports regarding the interference with the operation of the Laclede Gas Company and to record or cause such reports to be recorded and to take action on the basis of such reports, and has that continued to be your duty?

A. Yes.

Q. I will ask you whether or not, to your knowledge, a record was kept of reports received in the regular course of business by Laclede Gas Company with respect to interference with the operation any time between July 1, 1956, and the present date?

A. Yes, we always keep a record of any report of any incidents of any type.

Q. Under whose supervision were these records kept or prepared?

A. Those that had to do with customers were prepared under the supervision of Mr. Charles Digiovanni.

Q. How about reports which relate to interference with the operation of the Laclede Gas Company?

A. If they had to do with pressure on the system, under the direction of Mr. C. H. Crum, our engineer.

Q. Was he acting under your supervision?

A. Yes.

Q. Are the records which were made by these employes, acting under your supervision, here in court today?

A. Yes.

Q. Do you have them with you?

A. I have part of them and Mr. Digiovanni has the rest of them.

Q. Do you have records made in the usual course of business with respect to reports of interference with the operation of Laclede Gas Company subsequent to July 5, 1956?

Mr. Levin: The word "interference" is clearly a conclusion. I object to that unless it is better defined.

The Court: Sustained to the form of the question.

By Mr. Welborn:

Q. I will ask you do you have here the reports which were kept under your supervision and which were received by the Laclede Gas Company in the regular course of its business and which were acted upon by you or other officials of the Laclede Gas Company subsequent to July 5, 1956, [fol. 36] relative to reductions in pressure in the Laclede Gas Company system?

A. Yes.

Q. Do you have those records, Mr. Burgess?

A. Yes. I must explain it don't only mean reduction in pressure.

Q. Changes in pressure?

A. Yes.

Q. May I see that? (Witness hands papers to counsel.)

The Court: Mr. Welborn, before you present that we will take the morning recess.

Mr. Welborn: All right.

(Ten-minute recess.)

Mr. Welborn: I ask you, Mr. Reporter, to mark this document consisting of eighteen pages, headed "July 5, 1956," as Plaintiff's Exhibit 3.

(Thereupon said document was marked for identification as Plaintiff's Exhibit 3.)

Q. Mr. Burgess, I will hand you this document which has been marked Plaintiff's Exhibit 3, and ask you if that is the record of the events at Laclede Gas Company that were kept under your supervision in the regular course of

business by Laclede Gas Company relative to gas stoppages and gas supply changes between July 5, 1956, and the present date (handing said document to the witness)?

Mr. Levin: I object to the form of the question.

The Court: I think the form is objectionable as leading.

By Mr. Welborn:

Q. I will ask you if that record which has been marked Plaintiff's Exhibit 3 was kept under your supervision?

A. Yes.

Q. And was it kept in the regular course of business of the Laclede Gas Company?

A. Yes.

Q. I will ask you, Mr. Burgess, whether or not, in the regular course of business of Laclede Gas Company, reports have been received since July 5, 1956, and prior to July 5, 1956, from customers of Laclede Gas Company regarding failure of gas supply?

A. Yes.

[fol. 37] Q. Are such calls and reports received in the normal course of business of Laclede Gas Company?

A. Yes.

Q. In the normal operation of Laclede Gas Company could you say approximately how many such reports would be received in a ten-day period?

A. On failure of gas service?

Q. Yes.

A. I imagine something less than one hundred in a ten-day period.

Q. From the 1st of July, 1956, how many calls were received by Laclede Gas Company?

A. We received some thirteen thousand calls on "no gas" principally, or failure of service, and on leaks that exist in the street.

Q. Was a record kept of such calls?

A. Yes.

Q. How were they originally recorded?

A. "No gas" complaints are recorded in the customer contact department, under the supervision of Mr. Digiovanni, and the tickets will show the customer's name, address, telephone number and type of complaint.

Q. And are those reports subsequently summarized and placed in record form in the regular course of business of the company?

A. Yes.

Q. Is such summary and such report contained in the document which has been marked Plaintiff's Exhibit 3?

A. Not all of the "no gas" complaints are contained in this report. Only those where a new area was found without gas. It would be impossible to record every complaint on this type of report. However, we do have the tickets on the complaints.

Q. Exhibit 3, then, is just a sample of some of the calls received, is that right?

Mr. Levin: I object, calling for a conclusion.

The Court: Sustained to the form of the question.

By Mr. Welborn:

Q. Are other records and reports which are made and kept by Laclede in the regular course of business entered on that document which has been marked Plaintiff's Exhibit 3?

A. Yes.

[fol. 38] Q. Would you explain generally the nature of other matters which are recorded in that report?

A. This reports such items as, for example, 6:20 p. m. on July 5th bolt thrown through the window at Station G. It records such things as at 1:15 a. m., July 6th, odor of gas coming into the Forest Park office. City Lighting Department at 1:20 a. m. reported gas leak on fire and they extinguished it.

Q. Are those records made on that record by the Laclede Gas Company for action by the officers and employes of the Laclede Gas Company?

A. Yes.

Q. Mr. Burgess, I will ask you whether or not you have direct and personal knowledge of any of the events which are listed on Plaintiff's Exhibit 3?

A. The only direct personal knowledge are the cases of where a bottle filled with odorant was thrown through the window of our Forest Park office; I have direct knowledge

of a bottle of odorant thrown through our garage at Forest Park headquarters. The only other direct knowledge I would have would be where I called people personally, like the Mallinckrodt Chemical Company, Mr. Kuplo, about gas found in an inner tube in their laboratory.

Q. What do you know about the situation at Mallinckrodt?

A. Mr. Kuplo tells me the gas went off in their laboratory and he was much concerned about it, since we were concerned with the Atomic Energy Commission. That is all I know about it.

Q. What occurred at the Forest Park plant with respect to the odorant?

A. A bottle of odorant was thrown through the window of the north side of our office and on the east end of the office with such force it went completely through the window and made a hole about that big (indicating) around in the window, completely across the room and hit a steel door facing, dented it, and broke the bottle into practically a million pieces, and the odor spread throughout the building.

Q. Explain what this odor is to which you refer.

A. The odorant is used by us and by other companies [fol. 39] throughout the country to put in natural gas, that has practically no odor, so in case of leaks in the street they can be detected readily. It is used for safety purposes. We use it every day in our normal course of business.

Q. How is this odorant introduced in the gas?

A. In what we call an odorizer. It goes in automatically through a piece of mechanism that drops the odorant into the gas stream.

Q. Where is the supply of the odorant kept?

A. We keep it in several places; most of it at our Catalan street plant, some at Station A, I believe some of it is kept at our Mackenzie.

Q. Did any change occur with respect to the supply of odorant in the lines of the Laclede Gas Company at midnight July 1, 1956?

A. I can't answer that question.

Q. Do you know whether or not any of the employes of Laclede Gas Company that went on strike took with them odorant from the Laclede Gas Company?

A. I can't answer that, except it has been found by the police, they reported to me.

Mr. Levin: I object to that. The witness said he can't answer it. Anything with reference to the police would be sheer hearsay.

The Court: Did you see them found?

The Witness: No, sir.

The Court: Sustained.

By Mr. Welborn:

Q. Mr. Burgess, has there been prepared, under your direction a chart map showing the location in St. Louis and St. Louis County on which reports have been received by Laclede Gas Company from customers of the lack of gas, which reports have been checked by the Laclede Gas Company and found to be correct?

A. Yes, sir.

Q. Is that chart made and kept under your supervision?

A. Yes, sir.

Q. Has that chart been made and kept in the regular [fol. 40] course of the Laclede Gas Company's operation?

A. Yes, sir.

Q. Do you have that chart here to-day?

A. Yes. (Witness produces large chart map.)

Mr. Welborn: Mark this as Plaintiff's Exhibit 4, please.

(Thereupon said chart map was marked for identification as Plaintiff's Exhibit 4.)

Q. Mr. Burgess, I am exhibiting to you here this chart map of the City of St. Louis and St. Louis County which has been marked Plaintiff's Exhibit 4, and I will ask you to explain how the red markings on that map have been placed on there.

A. First, this is a map of the distribution system, showing all the lines we have in service at the date it says on the map. When the calls came in about service I directed our drafting department to keep a record on a map, so that when the men went back to work we could start about restoring service. Shown in red are the areas affected that have no gas service at the present time.

Q. That lack of gas service in the area shown on here occurred after July 1, 1956, is that correct?

A. Yes.

Q. Mr. Burgess, have you made a study and have you ascertained the causes of the absence of gas to the Laclede customers since July 1, 1956?

A. About the only way we can tell with any degree of accuracy of the absence of gas can be explained on the north end of the map you will see a whole string of lines completely out of gas. There is a valve here for one of our main lines (indicating on map). Apparently this valve has been closed, shutting off the whole addition.

Q. The point to which you point was a point on Manchester avenue beyond Richter, is that correct?

A. Yes.

Q. Do you know the name of the subdivision served by these lines?

A. No; I don't.

Q. Were there any other areas in which the service has been terminated by the closing of the valves?

[fol. 41] A. Yes, practically all the areas in our county system have apparently been denied service because of closing of the valves. That is the only way they can put a whole addition out of whack.

Q. The point you were just pointing to was a point on Patterson north of Lindbergh, is that correct?

A. Yes.

Q. Do you know the name of that subdivision?

A. No, I don't.

Q. With respect to the places and areas shown within the City of St. Louis which are now lacking gas supply, do you know, from your study and experience, the method in which gas has been shut off from those customers?

A. It is apparently due to water in the gas mains.

Q. Has Laclede received from its customers since July 1, 1956 reports of water in the gas appliances?

A. Yes.

Q. In the City of St. Louis?

A. Yes.

Q. Mr. Burgess, I will ask you how these valves to which you referred are operated which have been cut off?

A. All of the valves we have in our system are located in valve boxes. It takes a special type of key, first, to open the boxes, and, secondly, to close or open the valve.

Q. Who has possession of those keys?

A. The Laclede Gas Company employes.

Q. Does anyone other than Laclede Gas Company employes have such keys?

A. Most of the fire departments throughout the city and county ask us for them and we have furnished them.

Q. Can the valve be opened or closed without a key?

A. If you dig it up and close it with a wrench, that would be about the only way.

Q. To your knowledge, have any valves been dug up and closed in that manner since July 1, 1956?

A. I know of none, no.

Q. Where are the keys of Laclede Gas Company valves kept?

A. Most of the trucks of our workers have keys on them, which are kept in the truck to be used in the normal course of operating and construction of our lines system.

[fol. 42] Q. Do you know whether or not on July 1, 1956 all of the keys to these valves were returned by employes of Laclede who went on strike?

A. That would be difficult to answer, because there has been no inventory made. We have extra keys at all times, of course, and it would be difficult to know whether or not all keys were turned in at the time the strike started.

Q. Do you have any knowledge of any particular person on strike being in possession of his keys?

A. No, I don't.

Q. Mr. Burgess, would you explain to the Court what, if any, safety problem originates as a result of the turning off of these valves such as you have described here?

A. The safety—as far as turning off the valve—is not at all bad, because the gas is turned off and nothing can happen, but if somebody comes back and turns it on again the gas is liable to escape in anybody's home that has not turned their meter off and the gas escaping could create a very explosive and dangerous condition.

Q. Has Laclede attempted to turn back any of the valves which have been turned off since July 1, 1956 serving the subdivisions in St. Louis County?

A. No, we have not.

Q. Is there any reason for your failure to do that?

A. The turning on of gas in a subdivision or any section requires the help of great numbers of people. First it is necessary to turn off every meter, and be sure that all services are off that have been cut off previously, and turn the gas back on in the system, go back and turn on each customer and light the pilots. And we do not have that kind of help.

Q. With respect to the injection of water into the Laclede Gas Lines, does that practice give rise to any particular safety problem?

A. Yes.

Mr. Levin: I object to that. There has been no foundation of anyone injecting water. There has been a statement water has been in the system.

[fol. 43] The Court: Sustained, but with leave to lay a further foundation.

By Mr. Welborn:

Q. Mr. Burgess, has the Laclede Gas Company, in the regular course of its business, received reports of the injection of water into the system of Laclede Gas Company?

A. Yes, sir.

Q. I will ask you, Mr. Burgess, how such water is injected in the system?

A. The report we received and the experience we have had heretofore—

Mr. Levin: I object to any prior experience, being irrelevant and prejudicial.

The Court: Overruled.

A. The report we received was given to us by the policeman personally, Lieutenant Moran, where they found a gas meter removed, the gas line tied to the water line with a hose, and water flowing through the water line in the gas line. Water pressure at this point was around 40 pounds and the gas pressure was less than a quarter of a pound, so it is quite simple for water to flow in the gas mains in this manner.

Q. When water is injected into the gas main in this manner what, if any, safety problems are caused by such action?

A. There are many. First off, the water, while traveling to a low point, which it would naturally do, if it shuts off someone's gas temporarily en route and comes back on, you have gas escaping in the home, and if that person happens to be at home and strikes a match, or throws a switch, it could cause an explosion.

Q. Mr. Burgess, are there points in the Laclede distribution system where valves are located controlling the supply of gas to large numbers of customers?

A. Yes. I must say—first, there are five valves on our system on the Mississippi River system which could be closed and shut the entire town out of service.

Q. Are there other individual valves which would control the service to a large number of customers?

[fol. 44] A. Yes. On the periphery of our system in the county area practically all the new additions are served by one line. Where this line takes off the main line there is a valve, and you can shut it off by closing that one valve.

Q. How many valves would it be necessary to close to deprive the entire City of St. Louis of gas supply?

A. About five.

Q. Where are these valves located?

A. One at Ivory Street in the south part of St. Louis; one at Catalan Street; one at Mackenzie in the southwest part of town; one at Carrie Street; and one at Ferry Street.

Q. How are these valves protected against being shut off?

A. They are mostly enclosed by cyclone type fence.

Q. Is there a lock and gate on the fence?

A. Yes.

Q. Who has possession of the keys to those locks?

A. Some few of our employes have keys to these locks.

Q. Do any of the employes on strike have keys to those locks?

A. They had before they went on strike. I imagine they have them.

Q. What would be the result, Mr. Burgess, of the unauthorized shutting off of one of these valves?

A. Any one of them, depending how fast they were, any one of them might not disturb the whole area, if we could pick up the load, but we would have to act fastly; all our regulators and the control system would have to be in operation, otherwise the whole city might be without gas.

Q. If the entire five valves were shut off, so that the city would be without gas, is the Laclede Gas Company in position to restore the service to the City of St. Louis?

A. No. And even with a lot of help you would be too long a time restoring service.

Q. To your knowledge, how many valves have been closed on the system since July 1, 1956?

A. Since July 1st?

Q. Yes, sir.

A. It is a little difficult to say, because there have been several additions closed off apparently. There have been several customers within the city itself been closed off [fol. 45] individually, like Noonday Club, Missouri Athletic Club, Pruitt Housing Development. I would have to guess at it. There has been quite a few. I would have to go through the complete record to answer that question.

Q. Do you know whether or not those valves were closed in the manner you described?

A. Of course I don't know—

Mr. Levin: I object to that, because what he has seen in his official capacity is one thing, but he is asking of his own knowledge, and I would like the Court to qualify him to answer only if he knows.

The Court: Do you know all the reports reflect?

The Witness: I don't know of my personal knowledge, of course.

By Mr. Welborn:

Q. May I ask you if you know of any other way except to dig them up?

A. That is the only way I know.

Q. Mr. Burgess, you are acquainted I presume, with the proclamation and executive order of Governor Donnelly issued July 5, 1956, which has been introduced in evidence as Plaintiff's Exhibits 1 and 2?

A. Yes, sir.

Q. I will ask you whether or not, after 4:00 p. m. on July 5, 1956, Laclede has continued to receive reports of gas service being cut off to customers?

A. Yes, sir.

Q. I will ask you whether or not any of the employes of Laclede who are members of Local 8-109, 8-194 and 8-6 resumed their work at the Laclede plant itself after July 5, 1956?

A. No, they did not.

Q. Mr. Burgess, have you received, in the course of the regular business of Laclede Gas Company, reports regarding the escape of gas into the sewer systems since July 1, 1956?

A. Yes, sir.

Q. Will you explain, generally speaking, Mr. Burgess, what the origin of gas in the sewer system is, based on your knowledge and experience with the gas business?

A. It has been our experience we have about four cast [fol. 46] iron main breaks a week. Most of the times they are low pressure mains from 4-inch up to 12-inch. The way we know we have a main break is it escapes to a sewer system before detection of the odor and it catches fire. Immediately we dispatch a crew to repair such damage. We get them leaks from our bell joint in our cast iron system which we are continuously planting, and this could be a source of gas leakage, or a hole in the ordinary service line caused by electrolysis.

Q. Since July 1, 1956 have reports been received by Laclede, by you, of fires in the sewer system in either the St. Louis or St. Louis County area of gas in the sewer system?

A. Yes, sir.

Q. Do you know when such reports were received?

A. Yes. I will have to check the reports. (Witness refers to papers.) At 1:20 a. m. July 6th the city lighting department reported that there was on the north side of Davis street east of Polk a gas leak and they extinguished it.

Q. Did you receive a report regarding a gas fire in a sewer in St. John's? Refer to page 34.

A. Yes, sir.

Q. What report was received and at what time regarding this incident?

A. At 10:07 p. m. July 9th Mr. Picher, a dispatcher at St. John's Fire District, reported a fire in manhole at Engler and Thomas.

Q. What was done with respect to that fire?

A. One of our men called the fire department and asked them to put it out and to barricade the manhole and see it was vented thoroughly, so gas could escape.

Q. Has Laclede taken any steps to ascertain the source of the gas which was on fire on these two occasions?

A. No.

Q. Would you explain why, if there is any reason?

A. We do not have the personnel available to do this type of work.

Q. Have you, in the course of your experience with Laclede Gas Company, had experience with explosions of gas in sewer systems?

A. Yes.

[fol. 47] Q. Would you describe to the Court the method in which such explosions occur as the result of such explosions?

A. The most outstanding was in the City of Cleveland, where gas got in the sewer system—how, no one knows—but it blew up three blocks of the street, causing considerable damage.

Q. Laclede Gas Company does not have sufficient personnel to check sewer leaks, is that correct?

A. That is right.

Q. I will ask you whether or not there have been numerous other reports received by you in the regular course of your business similar to those to which you have just testified and on which reports are recorded on the documents and listed on Plaintiff's Exhibit No. 3?

Mr. Levin: I object to the form of the question, for the reason Plaintiff's Exhibit 3 shows that what the gentleman just testified to was the only instances of that kind, and it asks for a conclusion from the witness of the contents of the document that has not yet been offered.

The Court: Objection sustained to the form of the question in the use of the word "numerous."

By Mr. Welborn:

Q. Are these instances to which you have testified, Mr. Burgess, illustrative and typical of other reports you have received in the conduct of the operation of the Laclede Gas Company since July 1, 1956?

A. Yes.

Mr. Levin: I object to the question because of the use of the word "typical," calls for a conclusion of the witness.

Mr. Ely: No use to require him to go through the whole mess.

The Court: In the interest of expedition that will be overruled.

A. Yes. We have reports here of where our long distance regulators have been put out of service. Those regulators are controlled from our control board at our Forest Park office. Since July 1st we have had four such points put out of commission. Since July 4th there have [fol. 48] been three. We have a case where the wires were disconnected from our main switch at Station A operating the motors to the tar pumps. The report was the superintendent investigating this was severely burned and taken to the hospital along with a police officer that went with him. This report shows a report from the customers and the police department where meters have been taken away from an apartment house and later found in the Forest Park pond. It shows where the dials on all of the meters have been damaged in another apartment house. It shows all through here the cause of complaints by customers in new areas, and the valves had apparently been turned off in subdivisions. It shows in here a report from Station N where the pen arm on the low-pressure recorder went completely off the chart, which indicated at that time our low-pressure system was building up to a higher pressure than the system should stand. It was later found to be only water in that section of the line. It shows reports of odorant that has been dropped by persons unknown throughout the city and county areas. It shows activity of pickets at each of the stations.

By Mr. Welborn:

Q. May I ask you with respect to the dropping of the odorant throughout the area, what effect, if any, does that have on the ability of the residents of the area to detect the odor of escaping gas?

A. Of course, if a bottle of odorant was dropped in this room, you couldn't smell anything but the odorant for two days after, until it completely dissipated itself. You couldn't detect it by the odor.

Q. Does Laclede Gas Company have areas in St. Louis and St. Louis County in which large quantities of explosive gas or liquid are stored?

A. Yes, at our Catalan Street Station we have approximately one and half millions of propane gas stored, we have about three hundred thousand gallons of propane in storage at East St. Louis, and a small storage of propane at [fol. 49] Station A. This gas is a high volatile, high explosive liquid when released to the atmosphere. It is heavier than air and most dangerous if tampered with, but most docile if left alone.

Q. Does it have above-ground areas or locations where natural gas is stored?

A. Yes, we have natural gas stored in our holder stations throughout the city—Station A, B, Shrewsbury, Catalan, G & N. We have some thirty million feet of gas stored in holder stations.

Mr. Ely: I don't think of anything else. It is nine minutes until lunch time. It might expedite matters.

The Court: All right, I will give you lunch time to think about it.

At this point a recess was taken until 2:00 p. m., at which time the hearing was resumed and the following further proceedings had:

The Court: You have some further questions?

Mr. Welborn: I have a few more questions, your Honor.

Q. Mr. Burgess, you have mentioned in your testimony previously the matter of the underground gas storage project which is being developed by the Laclede Gas Company

in North St. Louis County. Would you explain briefly what that project is?

A. We started development of this project about four years ago and started injecting gas into the underground storage reservoir on 2 December, 1955. At this time we have approximately a billion feet of gas in storage. We hope to have in storage by January 1 after this something in excess of two billion feet. This project was developed to take care of customers in the St. Louis area who expressed a desire to use gas for heating purposes, and was the only means that we had—the only economical means we had at our disposal to furnish gas to the customers that desired it, because our supply of gas had been exhausted.

Q. What is the present status of the development of that project?

A. We have five wells drilled in the county where we are [fol. 50] injecting gas. We are in the process of drilling four additional wells. At this time the drilling of the four additional wells was shut down, due to the strike, at a point some 400 feet above the St. Peter sandstone, the stone at which we store gas. It is going to be necessary that all these wells be drilled and completed and tied into our field line system about September 1st in order that we inject sufficient gas for next winter for the customers we are now obligated to serve.

Q. How many applications do you have on file at this time for natural gas?

A. Approximately 36,000 unsolicited applications on file for gas heating service.

Q. If this strike continues will Laclede be in a position to furnish those customers with the gas they request for next season?

A. No, we will not, because it involves a number of things—the construction of additional lines in our distribution system, completion of these wells in storage, connecting them to our storage field lines, and other miscellaneous work necessary before we could take on these customers and serve them with gas.

Mr. Welborn: I believe that's all.

Cross examination.

By Mr. Levin:

Q. You don't mean to leave us with the impression you are going to take on the 36,000 customers, do you?

A. No.

Q. That was never your intention, was it?

A. The intention was, in the order of the Public Service Commission, that we have no less than one old customer for each one we took on.

Q. As a matter of fact, you have been unable to serve the customers for years and years, without having a strike, isn't that correct?

A. The applications we had on file for house heating was closed in 1952 for old customers. Up to September 30, 1955, we were able to supply all our—

Q. So when you are talking about 36,000 you are not talking about anyone who is presently getting gas for [fol. 51] heating, are you, or anyone who has received gas in the past?

A. I can't answer that, when they might have had it somewhere else.

Q. The speed with which you drill these wells and turn the gas on was wholly controlled by the company, wasn't it?

A. Well, no. It is mostly controlled by the ability of the zone to take it and the number of wells you have.

Q. If you started a few years earlier it would be finished?

A. Sure, that's right.

Q. That was altogether up to your determination?

A. No, we had a considerable amount of lawsuits, and the condemnation question, which was not decided until—it was on December 1st, I believe, when the condemnation proceedings were finally decided, and we injected gas December 2nd.

Q. So far as the city or county is concerned, the maximum you have had in contemplation, all things running in your favor, would possibly be 10,000 new customers this year?

A. That is possibly right.

Q. For that matter, all the rest may have to wait for years?

A. Not necessarily years. Maybe until next year.

Q. As far as any of those people are concerned, there is no emergency existing concerning those people in the month of July, is there?

Mr. Welborn: I object to that.

The Court: Sustained to the form of the question.

By Mr. Levin:

Q. Have you accepted the applications of those people you are talking about, the 36,000?

A. Yes, we have them on file.

Q. Have you accepted the applications?

A. What do you mean "accepted"?

Q. Have you notified them their applications have been accepted?

A. We have notified the first 6,000 customers, in the order they were received, asking them to signify whether or not they still wanted gas, and we are in the process of having those returns coming in now.

[fol. 52] Q. Now will you answer my question? Has Laclede Gas Company accepted those applications and notified those people of its acceptance?

A. All 36,000?

Q. Any of them.

A. No, we have not.

Q. So that so far as those customers are concerned, they don't know, and you have never told them, they will get gas, is that right?

A. I will have to explain it.

Q. Will you first answer and then add your explanation?

The Witness: Could I have the question again?

(Question read.)

A. We wrote each of the customers in numerical order in which they were received a letter stating if they still desired gas it would be available and for them to signify by a postcard we enclosed whether or not they still wanted

gas, and then we would return them a permit, or an order of approval, and we have not sent out any permits yet.

Q. Prior to July 1, 1956, no permits approving any applications were sent out?

A. That is correct.

Q. Before the hearing started this morning you reviewed with me a partial list of the industrial customers of the company. Have you since that time made a search for a more complete and comprehensive list?

A. No, sir.

Q. Laclede Gas Company furnishes natural gas and propane, does it not, to industrial customers in the City of St. Louis?

A. Yes.

Q. Does it sell such natural gas to customers and persons in business who are engaged in commerce across the state lines?

A. I suppose we do. We sell it to anybody who wants it, and we have any number of industrial and commercial customers.

Q. Does Laclede Gas Company sell its gas, its product, to Anheuser-Busch?

A. Yes.

Q. Does it sell its product to Mallinckrodt Chemical Company?

A. Yes, sir.

Q. Does it sell gas to Monsanto Chemical Company?

A. Yes, sir.

[fol. 53] Q. Does it sell gas to International Shoe Company?

A. Yes, sir.

Q. Does it sell gas to Brown Shoe Company?

A. Yes, sir.

Q. And the Missouri Pacific Railroad shops?

A. Yes, sir.

Q. And the Frisco Railroad shops?

A. Yes, sir.

Q. Does it sell gas to the Lambert Airport Terminal?

A. Yes.

Q. Does it sell gas to the Union Station in St. Louis, who serve the railroads?

A. Yes.

Q. Sell gas to the Terminal Railroad Association?

A. Yes.

Q. Does it sell gas to McDonnell Aircraft Company?

A. Yes, sir.

Q. Sell gas to Curlee Clothing Company?

A. I suppose we do. I know the others of my own personal knowledge, but I imagine we do.

Q. Will you name for me other industrial customers, firms engaged in commerce, in St. Louis, to whom you sell gas?

A. Lincoln-Mercury plant, and the shoe companies.

Q. National Lead Company?

A. Yes.

Q. That includes the Titanium Division?

A. I don't think we sell them.

Q. But National Lead you do?

A. Yes.

Q. Any others? (No answer.)

Q. Where does all the company's gas come from?

A. We buy our natural gas from Mississippi River Fuel Corporation.

Q. Where does it get it from?

A. They have several places. They buy some from United Gas Company in Texas, some in Louisiana. Most of their gas comes from Texas and the balance from Louisiana.

Q. I have a prospectus issued in connection with the sale of Laclede Gas Company Preferred Stock, Series A. The date of the prospectus is March 14, 1956. You are familiar [fol. 54] with this, are you not (handing document to the witness)?

A. Yes, I knew of this.

Q. It was shown to you before it was issued, was it not?

A. I read it before it was issued.

Mr. Levin: I would like to have this marked for identification as Defendants' Exhibit A.

(Thereupon said document was marked for identification as Defendants' Exhibit A.)

Q. Perhaps this will refresh your recollection as to the source of the gas supply, if you read from Defendants'

Exhibit A, on page 9, captioned "Gas Supply" (handing document to the witness)—does that refresh your recollection as to the source of the gas and where it comes from?

A. Yes, that is what I said, I think.

Q. What you meant to say is what appears on page 9 of Defendants' Exhibit A?

A. (Reading) "The company purchases all of its natural gas from Mississippi River Fuel Corporation, a natural gas pipe line company with facilities extending from the Carthage field of Texas into Perryville, Louisiana, and thence to St. Louis and environs. Mississippi purchases the major portion of its gas supply from United Gas Pipe Line Company of Shreveport, Louisiana. This gas is delivered to Mississippi at Perryville."

Mr. Welborn: I object to that.

Mr. Levin: Withdraw it.

Q. All the natural gas received by Laclede and in turn distributed by it comes in from Perryville, Louisiana—from Shreveport and Perryville, Louisiana—originally from the Carthage field in Texas?

A. That report tells where the major supply comes from. That is where it comes from. I can't tell you where it comes from.

Q. You know of any natural gas sources delivered to Laclede within the State of Missouri?

A. All the gas is delivered to us in the State of Missouri. [fol. 55] Q. You mean Mississippi gets all the gas from Missouri?

A. It is delivered to us in Missouri. I don't know where they get it.

Mr. Ely: You asked whether delivered to them in Missouri? Your question was from Missouri, is that right?

Mr. Levin: Yes.

The Witness: There is no gas produced in Missouri that I know of.

Q. So far as you know, all of the natural gas is produced without the State of Missouri, is that right?

A. As far as I know, yes.

Q. As far as you know, all natural gas delivered to

Laclede by Mississippi emanates outside of the State of Missouri, is that correct?

A. Yes.

Q. And from what states does it emanate?

A. It comes from Louisiana and Texas, I understand. That is hearsay.

Q. How long have you been in the natural gas business?

A. About thirty years.

Q. You have some knowledge and general experience of the sources of natural gas, do you?

A. Yes.

Q. You are required to know that as part of your position with Laclede, is that correct?

A. Yes.

Q. The quality of the gas varies according to the field from which it is received, too, doesn't it?

A. Yes.

Q. So, therefore, you have to know from where it emanates, don't you?

A. I don't know that is necessary, but it is good information.

Q. This information you have received regarding the gas received by Laclede, isn't that correct?

A. Yes.

Q. How much natural gas did Laclede buy from that source in the twelve months ending September 30, 1955—I believe your company is on a fiscal year basis, is that right?

A. Yes. How much?

Q. Yes.

A. You have the figures. (Counsel hands paper to the witness.) You want money or volume?

[fol. 56] Q. Money.

A. In money it was $15,509,773.00 worth.

Q. Do you have another figure for the twelve calendar months ending December 31, 1955?

A. Yes.

Q. What is that figure?

A. $16,156,481.00.

Q. Does the company buy propane gas, too, separately?

A. Yes, we buy propane.

Q. You buy that in tanks, do you not?

A. Yes, by tank car.

Q. Where are those tank cars delivered to your company?

A. They can be delivered to our Catalan Street station, Station A, or Shrewsbury.

Q. Aren't those delivered to Laclede on the East Side on a spur of the Missouri Pacific Railroad?

A. We had a deal with Phillips Petroleum last year where they were on stand-by service, twenty tank cars, on the East Side.

Q. You mean East St. Louis, Illinois?

A. Yes. But they belonged to Phillips Petroleum.

Q. That gas is finally delivered from East St. Louis, Illinois into Missouri by Phillips Petroleum to you, is that correct?

A. Yes.

Q. That is twenty tank cars on stand-by, is that correct?

A. Yes.

Q. How many tank cars would that have been during the course of last winter's season altogether?

A. I can't answer that exactly. I don't know if we used any out of those tank cars last winter. We should have. Our use of propane last winter was very small.

Q. Wasn't it a hundred or more tank cars that you used last year?

A. I can't answer that. I don't know.

Q. It was more than the twenty you had on stand-by, wasn't it?

A. I think so. We had a million and a half on storage in one place.

Q. All that million and a half gallons came by tank car, did it?

A. Yes.

Q. From what source did the million and a half gallons in storage emanate?

A. About half and half between Oklahoma and Texas.

[fol. 57] Q. All from outside of the State of Missouri?

A. Yes.

Q. Does the company use pipe lines and pipes of various types and sizes?

A. Yes.

Q. Does it regularly purchase pipe and pine lines and fittings?

A. Yes.

Q. What volume was purchased in the most recent year?

A. Pipe and fittings supplies?

Q. Yes.

A. I imagine three or four million dollars worth.

Q. From what states did those three or four million dollars of pipes and pipe fittings come?

A. They probably came from Pennsylvania—a lot of them—Ohio, Texas. I don't know where they all came from.

Q. Practically all from sources outside of the State of Missouri?

A. The great majority did. We buy a lot of stuff locally from suppliers.

Q. But the great majority came from states other than Missouri, is that right?

A. Yes, I think so.

Q. Are they shipped by rail?

A. Some by rail, some by truck.

Q. Those railroads were interstate railroads, were they not?

A. Yes, sir.

Q. And the trucks were interstate common carriers, were they not?

A. I imagine so.

Q. What other products or commodities does Laclede buy or use in the transaction of its business?

A. Pipe, meters, valves, fittings.

Q. Where are the meters purchased from?

A. There are four or five meter manufacturers.

Q. Where are they located?

A. They have plants throughout the United States.

Q. Will you state where the meters come from?

A. I don't know exactly. They are from out of the state.

Q. From what states?

A. Pennsylvania, Ohio. Some valves and fittings from Louisiana and Texas.

Q. Can you give us the approximate dollar volume of [fol. 58] Laclede's meter purchases in the last year?

A. About five hundred thousand dollars worth.

Q. Practically all from outside of the State of Missouri?

A. Yes.

Q. You were continuing to enumerate when I stopped you. Will you tell us what other commodities you purchase?

A. We purchase anything that is used in our business, which is pipe, fittings, valves, fittings, regulators, meters.

Q. Where are the regulators made?

A. Regulators, meters and valves, most are made East.

Q. East of the Mississippi River and outside of the State of Missouri?

A. Yes.

Q. And they are shipped from out of the State of Missouri?

A. Yes.

Q. Will you continue?

A. I don't recall anything important.

Q. Are you familiar with the office department of the company?

A. No.

Q. You know where the printing and stationery is purchased?

A. No.

Q. Who would have the information on that?

A. Our purchasing agent would probably be the best man to ask about that.

Q. Mr. Burgess, from the testimony you have now given, including the 16,156,481 of natural gas purchased which emanated from outside of the State of Missouri, all these other purchases you testified about in the twelve months ending December 1, 1955, you would have bought from outside of the State of Missouri in excess of twenty millions of dollars, is that correct?

A. I can't say. It is approximately correct.

Q. To the best of your knowledge that is approximately the correct figure?

A. Yes.

Q. The figure on natural gas purchased is exact?

A. Yes.

[fol. 59] Q. Will you address yourself now to Defendants' Exhibit A and tell me what was Laclede's gross revenue,

first, in the fiscal year ending September 30, 1955 (handing document to the witness)?

A. $40,081,536.00.

Q. For the twelve months ending December 31, 1955?

A. $41,416,789.00.

Q. Mr. Burgess, again by reference to Defendants' Exhibit A, will you state for the record the volume of business Laclede did with its industrial and commercial consumers?

A. Commercial revenue September 30, 1955, $4,498,280.00.

Q. Was that commercial or commercial and industrial?

A. Just commercial.

Q. Where are you picking that figure up from?

A. Page 6.

Q. How about industrial, what volume of industrial consumers?

A. We have two types. First, industrial firm, $4,711,813.00.

Q. That was in the twelve months ending September 30, 1955, is that correct?

A. Yes.

Q. How about twelve months ending December 31, 1955?

A. $4,819,988.00.

Q. You have another type of industrial-commercial, do you not?

A. Yes.

Q. What is that called?

A. Interruptible.

Q. Isn't it correct that the interruptible customer is one that is distinguished from the normal industrial user because he buys at the dump gas rate and may be cut off when the demand is too high?

A. Yes.

Q. How much volume did you do in the twelve months ending September 30, 1955, with the industrial customer on an interruptible basis?

A. $1,825,844.00.

Q. And for the twelve months ending December 31, 1955?

A. $1,910,038.00.

Q. In the twelve months ending September 30, 1955, Laclede had a volume of $6,537,000.00 plus with the industrial customers of all types?

A. Yes.

[fol. 60] Q. In the twelve months ending December 31, 1955, it had gross revenue of $6,729,000.00 plus for the industrial customers?

A. That's right.

Q. These industrial customers that purchased that volume of gas are the ones whom you have identified earlier and others of similar character, is that correct?

A. Yes. We have almost three thousand industrial customers, of which those you mentioned are a part.

Q. Are all of those engaged in commerce, or activities in interstate commerce?

A. I can't answer. I know a number are.

Q. A considerable number you mentioned are, plus the others?

A. Yes.

Q. Are you at all familiar with the labor relations of the company?

A. Yes, fairly familiar with them.

Q. You have identified three unions here as being the collective bargaining agent for the company's employes. By virtue of what is Local 8-6 designated as the collective bargaining agent for the local production workers?

A. I don't understand that question.

Q. Was there any proceeding, at law or otherwise, at which it was determined that Local 8-6 represented as bargaining agent the production and service employes of Laclede?

A. I can't answer that question. All I know we negotiate a contract. Anything that has to do with the details would have to be answered by somebody else.

Mr. Levin: I would like to have marked for identification as Defendants' Exhibits B and C these two papers.

(Thereupon two documents were marked for identification as Defendants' Exhibit B and Defendants' Exhibit C, respectively.)

Q. Did you occupy the same position you now have on September 27, 1955?

A. Yes, sir.

Q. You know the signature of Mr. E. L. Ramsey, Vice-President of Laclede Gas?

A. Yes.

[fol. 61] Q. Is that Mr. Ramsey's signature on Defendants' Exhibit B (handing document to the winess)?

A. It looks like it.

Q. Will you look at Defendants' Exhibit B? I would like to ask you a few questions about it.

(Witness examines said document.)

Q. Mr. Burgess, you have looked at Defendants' Exhibit B. Had you seen that paper before?

A. No, sir.

Q. Were you aware of the actions that led up to the execution of Defendants' Exhibit B?

A. I imagine, from reading it, it was at the time the old union changed its name and amalgamated with the Oil Workers.

Q. Local 6 of the United Gas, Coke and Chemical Workers changed its name to Local 8-6 of the Oil, Chemical and Atomic Workers International Union, isn't that correct?

A. Yes, that is what it appears to be.

Q. Then did the company and the union join so far as certification of the union is concerned as bargaining agent?

A. They both signed it—Local 6 and our Vice-President signed it.

Q. The company and the union together moved the National Labor Relations Board, in the proceeding known as "Laclede Gas Company and Oil, Chemical and Atomic Workers International Union, Local 8-6, Case No. 14-RE-18, to amend the certification, in this case made by the board on November 24, 1948, isn't that correct?

A. That is what it says, yes. I don't know anything about it.

Q. Who does know about this?

A. Mr. Ramsey.

Q. And he is available?

A. I don't know. He can be made available.

Mr. Ely: We will admit the contents of the document, if you want us to.

Mr. Levin: Counsel, I gather, will consent to let me read the stipulation into the record. It is stipulated by counsel for all parties that on September 27, 1955, Laclede [fol. 62] Gas Company and Oil, Chemical and Atomic Workers International Union, Local 8-6, petitioned the National Labor Relations Board in the matter of Laclede Gas Company and Oil, Chemical and Atomic Workers International Union to amend the certification made by the National Labor Relations Board on November 24, 1948, which certified the United Gas, Coke and Chemical Workers Local 6 as the sole and exclusive bargaining agent for all the employes in the unit there described, consisting generally of all the production and service employes of Laclede Gas Company, from United Gas, Coke and Chemical Workers of America, Local 6, to Oil, Chemical and Atomic Workers International Union, Local 8-6, for the purpose of collective bargaining, and for the stated reason that United Gas, Coke and Chemical Workers had at that time merged with the Oil Workers International Union.

Mr. Ely: That may be stipulated.

Mr. Levin: And that pursuant to said joint motion filed by the parties the National Labor Relations Board did, in due course, amend the certification and designate the Oil, Chemical and Atomic Workers International Union, Local 8-6, as such certified bargaining agent for the unit.

Mr. Ely: Agreed.

Mr. Levin: It is further stipulated that, in like fashion, the same parties did, on that same date, move the Board to amend the certification of Local 194, United Gas, Coke and Chemical Workers of America, which had, in 1944, been duly certified as sole and exclusive bargaining agent for all the employes and office and clerical unit of Laclede from United Gas, Coke and Chemical Workers Union 194 to Oil, Chemical and Atomic Workers Union Local 8-194, for the same stated reasons; and that thereafter, pursuant to said joint motion, the National Labor Relations Board did duly certify Local 8-194 in that fashion to represent the employes in the same union.

Mr. Ely: That is agreed.

[fol. 63] By Mr. Levin:

Q. You talked about the Cleveland explosion. That happened while there was no strike, isn't that correct?

A. Yes.

Q. The plant was operating quite normally?

A. Yes.

Q. And an explosion occurred?

A. Yes.

Q. So the question of a strike had nothing to do with it, is that right?

A. That's right.

Q. When the Laclede Gas Company had a terrible explosion at the Field House a few years ago and a few people were killed, that occurred in mid-day during the regular working hours, isn't that correct?

A. All I know of that explosion, it happened before I came here, I think what you said is true.

Q. That was also absent the existence of a strike, isn't that true?

A. That is correct.

Q. Isn't it also true that in the normal course of the company's operations, in addition to the hundred or so calls you said are received in ten days advising of "no gas" you normally receive hundreds of calls complaining of the smell of gas, or leaking gas, isn't that right?

A. Yes, we have a number of leaking complaints that come in each day.

Q. Actually, isn't it also true in the winter time those odor calls amount to thousands in a day?

A. Well, no, I don't know of any day we ever had a thousand.

Q. How many hundreds?

A. I am not thoroughly familiar with that. Mr. Digiovanni can give you a better idea of that.

Q. In any event, in any old gas system, such as Laclede is in downtown St. Louis, you normally have a considerable number of leaks, isn't that correct?

A. We have leaks, yes, it is normal to have some leaks.

Q. Isn't it also true that water in your gas system is rather normal and natural and that you have regular drip crews always going out to clear that water?

A. Yes, we have drips in our entire system.

[fol. 64] Q. The natural seepage puts water in the gas lines, doesn't it?

A. Yes, on some of the low-pressure systems.

Q. In the period of severe rains such as recently you get more water than normal, don't you?

A. Yes.

Q. Is it also true on many occasions the company runs water through the mains in order to change the quality of the gas, to humidify it?

A. We don't change the quality. In some cases we humidify the gas to keep the juice moist in the cast iron pipe joints. However, when it comes in here from the pipe line the gas is thoroughly dehydrated; otherwise it would not flow through the pipe line. When we get it it is lacking in moisture. It is saturated when it comes out of the well. We try to saturate the gas back to as close to its original condition as possible. That is why they put water in there.

Q. You do introduce, though, deliberately, humidity in the system, isn't that right?

A. Yes.

Q. You do it with live steam and with water, is that right?

A. Steam generally.

Q. On frequent occasions there is actually a stream of water run through the pipe, isn't that right?

A. I know of no such occasion as that.

Q. You know of water trickling through the system, don't you?

A. No.

Q. What happens to the steam?

A. The gas is so dry it takes it up.

Q. Were you in the negotiations up to the time the stoppage occurred at midnight June 30, 1956?

A. No. I was only in the negotiating room two or three times.

Q. The question was asked whether you were there that day.

A. Yes, I was there that day.

Q. You were part of the negotiating team, is that right?

A. I came in to make an explanation or answer questions.

Q. Had you been there as part of the negotiating committee of the company on the two or three earlier occasions you testified to?

A. I believe I came in once about June 18th.

[fol. 65] Q. Without going into all the details, isn't it a fact the matters to be negotiated were the usual matters that are talked about in a bargaining contract?

A. Yes.

Q. And the union and the company were negotiating on the terms and conditions that were usually negotiated between them in their collective bargaining agreements, isn't that correct?

A. Yes.

Q. Wages, hours and working conditions, isn't that right?

A. I wasn't on the negotiating team or had anything to do with it prior to June 18th.

Q. So far as you know, in the negotiations you participated in and observed, the only matters that were taken up were the normal and usual terms and conditions of their contract, isn't that right?

A. While I was in there there was only two items discussed, and that had to do with the present controversy whether or not the company will sell gas heating equipment or continue connecting the risers. That is the only two items discussed while I was in there.

Q. Isn't it a fact that that particular controversy related to the application and interpretation of Section 16 of Article VII of your contract?

A. I guess that is what the controversy was about.

Q. Article 16, Section VII of your contract had been in the contract for many, many years, hadn't it?

A. It has been in there since I have been here, yes.

Q. So whatever controversy you were aware of related to space heating or the risers and was claimed to be under Article 16 of Section VII, is that right?

A. Yes, it was claimed to be.

Mr. Levin: I should have said Section 16 of Article VII.

Q. You knew, did you not, when you went out to Forest

Park that evening of June 30th that the strike was impending?

A. It looked like it, yes.

Q. Prior to the commencement of negotiations Locals 8-6, 8-194 and 8-109 had given the company 60-day termina-
[fol. 66] tion notices, had they not?

A. Well, I didn't know they were called termination notices. I have read the letters from the unions.

Q. 60-day notices under the Taft-Hartley Act—those had been received, had they not?

A. Yes.

Q. Prior to the commencement of negotiations the company had also given the union 60-day Taft-Hartley notices, had it not?

A. Yes.

Q. Isn't it also true that within thirty days after those 60-day Taft-Hartley notices had been given the union had sent to the Federal Conciliation Service notice of the dispute?

A. I am not familiar with that. I understand it has been done, but I am not familiar with it.

Q. In your capacity were you told the company had done the same thing, is that correct?

A. Yes, it had been done, but I don't know how it was done, or who did it.

Q. Who would know about that?

A. Mr. Ramsey.

Q. Were not also similar notices sent to Mr. Daniel C. Rogers as Chairman of the State Board of Mediation?

A. I don't know of my personal knowledge. All of the papers were written by Mr. Ramsey or the union to any federal authority or state authority or anybody else.

Q. Mr. Ramsey would be the only one to know about that?

A. Yes.

Q. You testified earlier about the explosive quality of propane gas. Propane gas is always explosive, isn't it, when released?

A. Yes.

Q. You put propane gas in a tank car and put it on the siding, don't you?

A. Normally, yes.

Q. You pump propane gas out of the tank car into your storage facilities and leave it there, do you not?

A. Yes.

Q. Isn't it true when propane gas is in the tank cars it is in cars of the quality and type that have passed Interstate Commerce Commission sanction and approval?

A. Yes, they have certain safety controls on them.

Q. Propane gas, since the existence of the strike, you [fol. 67] have had in the tank cars, has been handled in the same way as in the past?

A. Yes.

Q. While propane gas is on the siding it is actually subject to the jurisdiction and control of the Phillips Petroleum Company, isn't that right?

A. Yes. They have none on the siding at the present time, however.

Q. As far as any propane gas the company has in its tanks, it is stored the way it always is, isn't that right?

A. Yes, it requires certain attention we give it.

Q. You have to have valves or safety controls on those tanks, do you not?

A. Yes.

Q. And you do have 300 people on the job, do you?

A. Yes, on the entire system.

Q. Where are those propane tanks?

A. At Catalan Street.

Q. How many people do you have at Catalan Street?

A. I don't know. I imagine five or six.

Q. They are all quite familiar with the equipment as with the tanks?

A. No, sir.

Q. Who is down there at Catalan, the superintendent?

A. I don't recall who is down there. Mr. Horner is here. He will probably testify.

Q. You have men who normally run and supervise Catalan, is that right?

A. Yes.

Q. Is it also true before the strike began the company was notified by the union that it would make available full

emergency crews for any emergencies that might arise in the strike?

A. State that again.

(Question read.)

A. The company was notified?

Q. Yes.

A. I work for the company.

Q. That is not the question. That the company was notified that the union would make available to the public full emergency crews to repair and take care of any emergency that might arise.

A. If they were I had no notice.

[fol. 68] Q. Did you see the morning papers on July 1?

A. Yes, I did.

Q. Did you see the three telephone numbers listed where that emergency service would be available?

A. Yes, I read it.

Q. Then you did know that that emergency service was being made available, did you not?

A. I read it in the paper.

Q. You testified you have some hospitals on your system. You have not received any complaint that any hospital has been without service, have you?

A. No. We only had one complaint from a hospital, and it may or may not have anything to do with the strike or stoppage or anything like that.

Q. In spite of the number of doctors and dentists you have on your line, you have had no complaints that a doctor or dentist had been denied service, have you?

A. I haven't gone into complaints in much detail. I don't know.

Q. Do you know of having had any such complaints?

A. I haven't, no.

Q. As far as you know, there is none?

A. As far as I know.

Q. When the company is shut down over the week end, and over a holiday, especially if it be an extended holiday, you drastically curtail your force, do you not?

A. Yes.

Q. Isn't it true on those occasions, even though you have

the same system operating full blast, that you only have one leak crew on hand in the City of St. Louis?

A. That might be true; though we have other leak crews in the county.

Q. But I mean in the City of St. Louis, under those circumstances, on a Sunday, or Sunday and Monday if the holiday should fall like that, you have only one leak crew on call in the entire City of St. Louis?

A. That might be right.

[fol. 69.] Q. That is a leak crew consisting of three men and a foreman?

A. Yes.

Q. Isn't it true that that leak crew goes off altogether at 12:30 midnight, and there is nobody on call between that and 8:00 o'clock in the morning?

A. I think that is essentially correct, yes.

Q. Is it also true that in the entire County of St. Louis you have only one leak crew to serve the entire County between 8:00 a. m. and 12:00 noon on Sundays, and on Sundays and the following Monday if it is a long holiday?

A. That is possibly true. I am not entirely familiar.

Q. You are not prepared to say there are any more, are you?

A. No.

Q. And that from 12:00 noon to until 4:30 in the afternoon there are two crews, is that correct?

A. That is correct.

Q. And that from 4:30 p. m. until 12:30 a. m. there is only one crew in the entire County of St. Louis, is that right?

A. I think that is right, yes.

Q. And that from 12:30 a. m. until the following morning at 8:00 o'clock, seven and a half hours, nobody is on hand for an emergency, is that correct?

A. That may be possible.

Q. You know you have nobody on the pay roll at those hours, do you not?

A. We have any number of men to answer emergency calls.

Q. But they are not standing by or working?

A. Not regularly employed, no.

Q. Don't you know as a fact that from the inception of the strike the union has had fourteen men, consisting of three leak crews and relief, on duty at all times until 12:30 midnight?

A. No, I don't know that.

Q. Don't you know from 12:30 until 8 a. m. union emergency leak crews are available over the week end holiday?

A. I wasn't familiar with that, no.

Q. You heard about a fire at the manhole in St. John's that occurred on July 9, 1956. Didn't you know when you [fol. 70] testified—did your report show that on that occasion the fire department of St. John's called the union leak crew and that the union leak crew went out and examined the manhole after the fire was put out?

A. No.

Q. Can you explain to the Court why your report does not contain that information?

A. The only information this report would contain on a situation such as that would be the information we received from a fire or police department.

Q. Referring again to that incident, isn't it true that on that occasion the fire department was called and it in turn got in touch with the union leak crew?

A. I will have to check. I don't know if they did or not.

Q. In any event, your record so shows?

A. I will look. (Witness refers to paper.) We talked to two people, McLaughlin of the Metropolitan Sewer District and somebody else.

Q. Didn't Mr. McLaughlin of the Metropolitan Sewer District tell you he was calling in and had called the union emergency crew?

A. No, sir.

Q. You are not aware of that, are you?

A. No.

Q. Are you aware of any emergency calls to which the union crew did not respond?

A. I am not aware of any emergency call that the union did respond.

Q. You haven't made it your business to check to determine what was going on so far as the union emergency crew is concerned, is that right?

A. That would be a little difficult for me to do, or any of the folks that work with me.

Q. This large document you have been looking at, containing 28 pages, identified as Plaintiff's Exhibit 3, contains a lot of material which has nothing whatever to do with leaks or conditions in the system, isn't that correct?

A. Well, I wouldn't say so. That report contains everything that was reported to us in general that is going on from July 5th up to whatever the last date is.

Q. Mr. Burgess, let me read to you from the second [fol. 71] memorandum, 4:30 p. m., page 20: "Reported that two pickets asked him if they were going to get paid tomorrow. He was instructed to tell them that he did not know."

A. That is part of our operations, yes.

Q. Then you can't say that contains a list—let me read again, at 5:02 p. m.: "No increase in the number of pickets at 1017 Olive Street. Same as usual." Followed by the next report at 5:32 p. m.: "Picketing speeded up at all stations except Catalan." Is that correct?

A. That is what it says.

Q. And at 1:18 a. m. on July 6th: "F. Roe called. Everything O. K. at Lackland and Link. Will call in about one hour." Is that right?

A. Yes.

Q. 7:02 a. m.: "J. Betty picked up copies of the proclamation in preparation to leaving for Brentwood and Shrewsbury."

A. Yes.

Q. The very next note: "7:07 a. m. Judge Otto called and wanted to know what the situation was. Informed him of condition at Brentwood, also that we do not know how many people will attempt to return to work at Forest Park." That is correct, is it?

A. Yes.

Q. At 7:37: "Called Max Eves at county police office. Advised him of conditions. Will contact Roe and possibly send help to Shrewsbury." Correct, isn't it?

A. Yes.

Q. At 8:00 o'clock: "Henry Frank headed for Shrewsbury." Is that correct?

A. Yes.

Q. That is just typical of what you find in this report as to those isolated instances you talk about, isn't it?

Mr. Welborn: I object to that.

The Court: Sustained to the form of the question.

By Mr. Levin:

Q. Actually, all this is a running commentary of a great deal of miscellany of whatever anyone thought appropriate to put down on a piece of paper, isn't it?

Mr. Welborn: I object to that. The document speaks for itself.

The Court: Sustained to the form of the question.

By Mr. Levin:

Q. You don't mean to imply that this paper, which has [fol. 72] been marked as Plaintiff's Exhibit 3 contains, as you have exhibited it, complains of interferences with the gas system, do you?

A. That report contains a number of things. The principal things of interest in there are the places in town and in the county where gas abnormalities have been reported, where district regulators were put out of service, where rocks were thrown through windows, where pickets were doing other things than picketing, all such items as that.

Q. Only one had been reported. You didn't make any independent investigation of the matters, did you?

A. No.

Q. As far as you know, all of these were what someone else had reported, is that right?

A. Practically 95% of our business is hearsay. It comes in over the telephone. Practically everything we know would be what you call hearsay.

Q. A great many conclusions of someone else, isn't that correct?

A. Our customer calls us and we check back.

Q. Did you see any regulator turned off during this time?

A. No.

Q. Did you go out to see if any was ever turned off?

A. No, sir.

Q. You talked about the gas all coming from Mississippi River Fuel Company leading into your system. From what sources is that controlled?

A. We have various controls. First, we have the Mississippi River Fuel Corporation regulating station, where the gas is regulated to us. We regulate it through regulators controlled at a point in our Forest Park office.

Q. Isn't it a fact at the Forest Park office you have a dial board, and all that is handled by remote control?

A. Yes, most of our gas in the high-pressure system is controlled by long distance controls. What we call telemetric controls.

Q. The man that handles them is the same man who handled them before July One?

A. Before July One we had dispatchers on the board who were members, I think, of Local 6, that did the actual [fol. 73] work. The engineer in charge was the supervisor and he helped them in doing whatever was necessary.

Q. Now the engineer is doing it himself?

A. Yes.

Q. He is throughly competent and qualified?

A. Yes.

Q. This is simple?

A. It is simple as long as it is not tampered with.

Q. You don't suggest to the Court they have been tampered with, do you?

A. Yes.

Q. When and where?

A. Let me see my piece of paper and I will tell you. (Plaintiff's Exhibit 3 handed to the witness.) All right. Page 22. 9:00 a. m. July 6th, report from Ed Trunk, chief engineer: "At 10:30 p. m. last night Captain Walker of the Third District Police Station called Rasmussen that he had a report that the switch on the power supply of the Jefferson and Crittenden regulator had been tampered with and offered to have protection there if we were going to have someone sent to fix same."

Q. Now let me see this.

The Witness: There is a lot more here. You want me to read them all?

Q. Let me talk about this one.

A. All right.

Q. You got a call from a Captain Walker, who said someone told him it had been tampered with, is that correct?

A. Is that what it says there?

Q. Yes.

A. Yes, that's right.

Q. And you made the determination not to go down to repair it, is that correct?

A. Yes.

Q. It was that slight that it was not even worthy of anyone going out, though it was in the morning, is that correct?

A. That gets into something else.

Q. In any event, you made the determination not to go down to attempt to repair it, isn't that correct?

A. Yes.

Q. You are not prepared to say anything was wrong, are you?

A. Yes.

Q. What was wrong?

A. The power supply failure immediately shows up on [fol. 74] our board at Forest Park, showing the power had been cut off at this point, and turns the instrument off.

Q. There has never been an interruption in the main supply, has there? Have you had an interruption in the main supply at any time?

A. I don't like to answer the question. What do you mean "main supply"?

Q. You said the gas blown in from Mississippi supplies the whole system. Where you get the gas in the main system, has there been any diminution of that supply?

A. No, sir.

Q. You said there were five main control points from that point out, is that correct?

A. Yes.

Q. Aren't all five of those points cyclone fenced and guarded regularly?

A. I don't know about being guarded. I know about them being behind cyclone fence.

Q. You have armed guards patrolling those sites, don't you?

A. No, sir, we don't.

Q. There has been no diminution in supply at those five control points, isn't that correct?

A. That's right.

Q. And whatever you were talking about has reference to minor points beyond these five critical points you were talking about, is that right?

A. They might be minor to you. They are quite major to people affected.

Q. What I want to know, the five principal supply points, there has been no diminution of supply whatsoever, is that correct?

A. I have answered it. Yes, that's right.

Q. The Laclede lets gas leaks pile up regularly on streets and in sewers, doesn't it?

A. Sometimes. It depends on what the leak is.

Q. You have a leak board at 1017 Olive, where there is recorded leaks on which reports come in?

A. Yes.

Q. Isn't it a fact that Laclede in the normal course of operation of its business will let certain street leaks go for months and years?

A. No, it is not true months and years.

Q. How long do you normally let them go?

A. Leaks are classified according to where they are and [fol. 75] what type leak, how serious it is, and they work in the order of the seriousness of the leak.

Q. The fact a customer smells a leak doesn't mean anyone rushes right out immediately, is that right?

A. Any leak in the home is—

Q. I said the fact a customer smells gas on the street doesn't mean you rush a crew out, does it?

A. Not necessarily, no.

Q. Is it also a fact that since the beginning of the year the company has increased the amount of odorant that goes into the system?

A. No, sir.

Q. The newspaper accounts are incorrect in reporting that?

A. We have not increased the amount of odorant that goes in the gas. That is a fixed amount—so much per thousand feet of gas—and has not been increased.

Q. Let's go back to the leaks. What about leaks that have been on the board better than a month east of Twelfth Street?

A. I can't go into details, because I don't have that much detailed information.

Q. But it is a fact leaks are permitted to accumulate for some months before anything is done?

A. I have answered that. It depends on the type of leak.

Q. Your line was leaking like a sieve between Kingshighway and Lindell, wasn't it, before it was replaced, over a period of about a year?

A. You make it sound pretty bad. Cast iron joints do leak, otherwise we wouldn't have to clamp every joint.

Q. If it was leaking regularly you had frequent complaints, is that right?

A. If it was "leaking like a sieve."

Q. Would you replace the entire pipe finally?

A. We don't replace the pipe.

Q. You pull up the street?

A. Yes, about every eight feet.

Q. That was for the purpose of repairing?

A. Yes.

Q. You had clamps on the leaking joints from Kingshighway to Skinker?

A. We have some seventy thousand joints in this town, [fol. 76] and have been attempting to fix about seven thousand.

Q. The majority of calls come about smells in the street from these leaks, isn't that correct?

A. Some of them. You can't put your hand on the type of leak.

Q. Getting back to the emergency crew, you don't know of any customer who has called in complaining of a leak within her house or premises that is not given immediate emergency service from the union crew, do you?

A. I don't know anything the union has done.

Q. You are not saying any customer who had such a leak did not have it attended to when the call was made?

A. I don't know. I can't answer that.

The Court: We will take the afternoon recess.

(10-minute recess.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Gentlemen, before you resume, I want you to fully present both sides of this matter, but it seems to me you are going pretty far afield. I don't recall any allegations in any of these pleadings that have to do with the kind of matters you are going into in some detail. I think we are getting irrelevant as far as the pleadings in this case are concerned, so please confine yourselves to the issues here.

Mr. Levin: I will, Your Honor. I appreciate the suggestion.

During the recess Mr. Hichew appeared with Mr. Needham of the company. Mr. Needham is on a pretty tight schedule. I wonder if he could testify now and get away. It should not be for more than fifteen or twenty minutes. It is largely the identification of records and certain material which he brought along.

Mr Welborn: We will be glad to admit the identification of the records and the figures they show, without calling Mr. Needham.

Mr. Levin: All right. Can we stipulate for the record [fol. 77] that Mr. Needham has supplied a paper that I will have marked as Defendants' Exhibit D?

(Thereupon a document was marked for identification as Defendants' Exhibit D.)

The Court: What is it, in general?

Mr. Levin: Exhibit D is an exact record maintained by the company in its Stores Department of stores expense and activity. This covers twelve months ending May 31, 1956. It is broken down into various categories—pipe and tubing, pipe fittings and various other purchases, totaling $1,840,294.00. However, that this does not include the purchases of automotive equipment and other

equipment used by the company in its operations and certain other items. That of the 1,840,294 a rather rough analysis has been made and broken down. That in this period beginning June 1, 1955 and ending May 31, 1956, 611,972 in pipe was purchased, 95% of which would have emanated from sources without the State of Missouri. That in the same period pipe fittings totaling $537,920.00 were purchased, approximately 50% of which emanated from sources outside of the State of Missouri. That other miscellaneous merchandise of the kind described in Exhibit D were purchased in the aggregate of 447,203, of which approximately 25% came from without the State of Missouri. That on the basis of the approximations 962,433 of those stores supplies came from outside of the State of Missouri in the period described. That during the heating period of '55-'56, ending in the spring of 1956, the company had purchased propane gas, all of which was delivered to it from sources outside of the State of Missouri, amounting in the aggregate to $84,783.01. And we will have marked for identification Defendants' Exhibit E the figures that I have just read in the record.

(Thereupon a document was marked for identification as Defendants' Exhibit E.)

[fol. 78] OFFERS IN EVIDENCE

If it will be so stipulated, I would like to enter those.

Mr. Ely: So stipulated.

The Court: Those Exhibits may be received.

Said Defendants' Exhibits D and E, offered and admitted in evidence, are in words and figures as follows:

(Here insert Defendants' Exhibits D and E.)

Mr. Levin: And that Mr. Needham would have so sworn if he had been sworn.

Mr. Ely: Yes.

Mr. Levin: With one minor correction on that stipulation. Mr. Hichew calls to my attention the fact the figure on propane gas, some $84,783.01 purchased in the fiscal year ending September 30, 1955, rather than in the period I have mentioned.

The Court: Very well. Does that satisfy you on those elements you wanted?

Mr. Levin: Yes, sir, but it does not in light of the fact Mr. Burgess who not wholly familiar with the Labor Board certifications. I think Mr. Ramsey would be the proper witness on that.

The Court: Assuming you get that?

Mr. Levin: Then I think we will be in good shape. It occurred to me my pleadings were framed in the nature of a return to the order to show cause. In order that there be a hearing on the permanent, I would like to amend my pleadings to include certain additional material, one of which describes the continuing nature of the threat inherent in King-Thompson, and the second part would be the inherent prayer for a declaratory judgment from the court because of certain factors.

Mr. Ely: If that is the same as your plea on the temporary.

Mr. Levin: Basically, yes.

Mr. Ely: It may be considered it is so amended, and you may furnish us with the amendment later on.

[fol. 79] The Court: We have it pretty well arranged now that we can introduce it on the merits.

Mr. Welborn: Can't we agree on the contracts and records?

Mr. Levin: Mr. Hichew brought with him this morning the copies of three labor agreements. Have those marked for identification as the Defendants' Exhibits F, G and H.

(Thereupon said documents were marked for identification as Defendants' Exhibit F, Defendants' Exhibit G, and Defendants' Exhibit H, respectively.)

Mr. Levin: May it be stipulated by the parties that Defendants' Exhibits F, G and H are respectively the last labor agreement executed between Laclede Gas Company and Oil, Chemical and Atomic Workers International Union Local Union No. 8-6, effective July 1, 1955, for a term ending June 30, 1956, and that it was the contract in force and effect at the time of the commencement of the strike?

That Defendants' Exhibit G is the last labor agreement between the company and Oil, Chemical and Atomic Workers International Union Local Union No. 8-109, effective at the same time and expiring on the same date and

that it was the contract in force and effect at the time of the inception of the strike.

That Defendants' Exhibit H is also a labor agreement between the company and Local Union No. 8-194, effective on the same date and expiring also on June 30, 1956, and in force and effect at the time of the commencement of the strike.

Mr. Welborn: Were those in force at the time of the commencement, or immediately prior?

Mr. Levin: Until midnight June 30, 1956.

The Court: That will be the agreement. They will be received.

[fol. 80] Said Defendants' Exhibit F, G, and H, offered and admitted in evidence, are in words and figures as follows:

(Here insert Defendants' Exhibits F, G and H.)

The Court: Is the only thing left hanging now, Mr. Hichew, the certification?

Mr. John O. Hichew (Attorney for Laclede Gas Company). Those the company will not be able to supply without having Mr. Ramsey present. I will have to go to the Law Library and run the indices in the Laclede Gas case. I think we can take them out of the reports of the National Labor Relations Board. I think the Court can take judicial notice of the Board's decisions and action. I think that will serve our purpose.

The Court: I think it will be agreed that is what they did. I take it that completes Mr. Hichew for the time being.

Mr. Hichew: That's right.

Allen H. Burgess resumed the stand for further cross-examination.

Mr. Levin: Mr. Burgess, on July 5, 1956 was the Laclede Gas Company served with any papers, proclamations or orders from the Governor of the State?

A. Yes.

Q. Was that the proclamation that has been identified here as Plaintiff's Exhibit 1?

A. I wasn't the one the paper was served on, but I was present and saw it served.

Q. That was Exhibit 1, is that correct?

A. Yes.

Q. Were you also present at the time of the service of Plaintiff's Exhibit 2, the Executive Order No. 1?

A. Yes, sir.

Q. Is it true that at the same time there was also served a document captioned "Executive Order No. 2"?

A. Yes, sir.

Q. Was a Mr. Daniel Rogers there at the time of the [fol. 81] service of the proclamation and executive orders Nos. 1 and 2?

A. Yes, sir.

Q. That is the Daniel Rogers that is referred to and identified in Executive Order No. 2, is that correct?

A. Yes, sir.

Mr. Levin: I would like to have marked for identification—you want to make it your exhibit?

Mr. Welborn: Yes.

(Thereupon a document was marked for identification as Plaintiff's Exhibit 5.)

Mr. Levin: May it be stipulated for the record that Plaintiff's Exhibit 5 is a certified copy of Executive Order No. 2, issued July 5, 1956, about which I have just been interrogating the witness?

Mr. Welborn: Yes.

The Court: All right.

By Mr. Levin:

Q. Mr. Burgess, upon the serving of that paper were you given any orders or instructions by Mr. Rogers?

A. I was not given any orders. I was out of the room part of the time he was talking to the Chairman of the Board and the President of our company, so I don't know the extent of the conversation or orders.

Q. Mr. Rogers didn't speak to you?

A. I talked to him, but he gave me no orders.

Q. No instructions?

A. Not directly.

Q. Under whose supervision did you continue to work then?

A. For the President of our company, Mr. Reid Derrick.

Q. You have continued since July 5, 1956, to work for Mr. Reid Derrick, is that right?

A. Yes.

Q. Have you received a pay check since July 5, 1956?

A. No, sir.

Q. Your employment then continues with Laclede Gas Company unchanged, does it?

A. As far as I know.

Q. No one indicated to you any change since July 5, [fol. 82] 1956, is that correct?

A. Well, I wouldn't put it that way—any change at all. As far as my employment is concerned, I am supposed to carry on and operate the company to the best of my ability.

Q. As far as you know, you are an employe of Laclede Gas Company, is that right?

A. Yes.

Q. And the properties you operate are properties of Laclede Gas Company?

A. Yes.

Q. Those people who work under your supervision are all employes of the Laclede Gas Company, isn't that right?

A. Yes.

Q. If any workers return to work, or report for their duties, they are working as employes of Laclede Gas Company, isn't that correct?

A. As far as I know, yes, sir.

Q. All their return and their conditions of employment are as employes of the Laclede Gas Company, isn't that right?

A. Yes.

Q. That would be true throughout the whole production and distribution system of Laclede Gas Company, isn't that right?

A. As far as I know, yes.

Q. Do you make out vouchers or disbursement authorizations?

A. Personally?

Q. In connection with your work?

A. I don't make up any vouchers or anything like that personally. What do you call a voucher?

Q. Do you authorize the expenditure of money?

A. Yes, sir.

Q. For what would you give such authorization; name some typical instance?

A. The construction of our system lines, purchase of automobiles, purchase of any type of equipment needed, practically everything done in the operating department requires my authorization.

Q. You have the usual authorization form you use for that purpose?

A. Yes.

Q. You sign that, do you?

A. Yes.

Q. They are actually signed "Laclede Gas Company" [fol. 83] by yourself, "Allen Burgess," or by "Allen Burgess" in your official capacity, is that right?

A. Yes.

Q. Since July 5, 1956, have you purchased anything at all for the operation of the company?

A. Very little, except food and some small supplies.

Q. In the purchase of those small supplies did you authorize the purchases?

A. Yes.

Q. Did you use the usual Laclede Gas authorization form as before July 5th?

A. Most of the things we bought since July 5th have been by word of mouth—no written authorization.

Q. That is as to most of them, but when you had an authorization who has signed it?

A. I haven't signed anything since July 5th authorizing anything.

Q. Did you buy anything?

A. Yes.

Q. In what capacity?

A. You mean as an officer of the company?

Q. Yes.

A. Yes.

Q. As far as you were concerned, there has been no change in your authority or position since July 5, 1956?

A. As far as I know, no.

Q. Have you hired anyone since that date?

A. No, sir.

Q. You know where the company keeps its bank account?

A. No.

Q. Do you know who signs checks or vouchers for the company?

A. Yes, sir.

Q. Who does?

A. Normally Mr. Needham, our Treasurer.

Q. Since July 5, 1956, have checks or vouchers been signed by the company?

A. I don't know.

Q. Did you receive a check?

A. No.

Q. Did you receive a voucher for anything?

A. No, sir.

Q. Mr. Needham would know about that, is that correct?

A. That's right.

Q. Has there been a pay roll for any of the employes working since July 5, 1956?

A. None that I know of. Most of the employes are on a monthly basis.

[fol. 84] Q. They are still working on the same monthly basis, is that correct?

A. Yes, sir.

Q. Now, getting back to the emergency situation, isn't it true, Mr. Burgess, that you have various truck operators on a dispatcher board even now during the course of the strike?

A. Yes, we have salesmen and other supervisory employes filling in on the board.

Q. Don't you know the instructions given to those men are any emergency calls they are to call the union emergency crews—and they do call them regularly?

A. No.

Q. You don't know those instructions—is that what you mean?

A. There has been no instructions issued by me, and I am in charge of it.

Q. Don't you know that is actually what has happened?

A. No, sir.

Q. You testified there is a safety problem after the gas is off and is turned on again. There has been no turning on by you of any of these portions that have been turned off, has there?

A. No.

Q. Your testimony is the only way they could be turned on is by a key, is that right?

A. It depends on what you are talking about. Gas can be turned on very quickly in a whole addition by turning a valve.

Q. As far as you know, nobody has tried to turn the gas on?

A. No.

Q. Unless someone were to try there would be no hazard?

A. That is correct.

Q. All the hazard is removed once the gas is turned off?

A. When it comes back on.

Q. That is better—if not turned back on again the hazard is removed?

A. If it is turned off with the valve the hazard is removed.

Q. Who is Mr. Smallwood?

A. He is the foreman that belongs to Local No. 109 and has charge of our leak crew in the county.

Q. Is he the truck superintendent?

A. He is a foreman. I don't know if he has that title.

[fol. 85] Q. Did you know that Mr. Smallwood, at the inception of the strike, authorized the men normally who were in the leak crew to continue their functioning for the protection of the public during the course of the strike?

A. No, I don't know that—don't know by what authority he would do that.

Q. Mr. Smallwood at the plant now?

A. I don't know. He has not been at work since the beginning of the strike.

Q. You do know, as you said, that there were certain numbers published in the newspaper, and you were aware of that?

A. I saw that in the paper.

Q. For emergency crew.

A. Yes; but by what authority?

Q. But you are aware of the fact that service has been rendered?

A. The Laclede Gas Company has given nobody authority to tamper with equipment.

Q. That was not the question. The fact is such a service has been rendered and has been available to the public since midnight, June 30, 1956, isn't that right?

A. I don't know that. There is no way for me to know that.

Q. You didn't ask or inquire—you just saw it in the paper?

A. Yes, I read it in the paper.

Mr. Levin: That's all, Mr. Burgess.

Redirect examination.

By Mr. Welhorn:

Q. On this matter of turning the gas off, these valves that were turned off, were they authorized to be turned off by the company?

A. No, sir.

Q. Is there any way now of preventing some unauthorized person from turning the gas back on?

A. The only way I would know of we would have to post a policeman on top of our valve.

Q. Are you an attorney?

A. No.

Q. When you spoke of the matter of your employment since July 5, 1956, were you attempting to interpret the legal effect of the Governor's seizure and his proclamation [fol. 86] and orders under that seizure?

A. No, I wasn't. And that is why I kept answering "as far as I know." I don't know exactly what my status is, except I am supposed to continue work.

Q. As far as you know, your status may have been changed as far as you know, is that correct?

A. That is correct.

Q. You don't purport to be a lawyer, and you are not drawing legal conclusions as to your present status, are you?

A. That is correct.

Q. These leak crews which you have on duty ordinarily, are they absent during the period of normal operation of the company?

A. No. We have something around twenty-four leak crews that are normally on the streets during normal working days other than holidays and Sundays. One leak crew is certainly not enough to take care of normal operations.

Q. One leak crew never did take care of the operations at the present time?

A. No, sir.

Q. Mr. Burgess, you testified that the company sometimes introduces water in the gas mains. When it does so does it control that operation?

A. Yes, sir.

Q. Water is not indiscriminately introduced by the company?

A. No.

Q. Did the company, at one time, on July 7, 1956, authorize the injection of water into the system at 2139 Eugenia street, St. Louis, to your knowledge?

A. We did not.

Q. You testified that the Laclede Gas Company has served the airport terminal. Has the Laclede served the airport terminal continuously since July 1, 1956?

A. No, the gas was shut off to the restaurant at the airport terminal. I don't remember the date. But it was shut off, and as far as I know it has never been restored.

Mr. Welborn: I believe that it all.

[fol. 87] Recross examination.

By Mr. Levin:

Q. You testified that there had been a call from Mallinckrodt Chemical Company that they had no gas in the laboratory?

A. Yes.

Q. Did you or anyone from the company call the union to advise them of such condition, and that it was an emergency and should be corrected?

A. In my capacity as operating vice-president of this company I have given nobody authority, and I am not going to call a union to take care of any work on our property, or anybody else's property. We feel that is Laclede Gas Company's business, and when we have enough employes we will take care of the situation ourselves. No outsider has any business tinkering with or tampering with anything on our property.

Q. So, actually, you are not concerned with the emergency so much as that it be done only by the Laclede Gas Company, with its employes, is that right?

A. We feel we should have supervision of any work done in connection with our property.

Q. That is true even if done by people who have normally taken care of that for Laclede?

A. That's right.

Mr. Levin: That's all.

Mr. Ely: Mr. Levin, I would like to ask a question with reference to this stand-by crew you mentioned several times. Are they all members of the union that are on strike, but they are standing by to perform certain duties for the company if it becomes necessary?

Mr. Levin: Certain duties for all members of the public, to prevent hazardous conditions.

Mr. Ely: They are members of the union on strike?

Mr. Levin: Yes.

Mr. Ely: But they are standing by, ready to perform work for the protection of the public, or whatever you might term it?

Mr. Levin: We will show they are more than stand-by. [fol. 88] That they have performed these services since July 1, 1956.

Mr. Ely: Is it your position that the employe can remain an employe and yet refuse to do whatever work he is told to do, and do what he wants to do?

Mr. Levin: I will argue it at the proper time.

The Court: Anything further with this witness?

Mr. Levin: Nothing.

HARRY BRODERSON, being sworn, testified:

Direct examination.

By Mr. Welborn:

Q. What is your name?
A. Harry Broderson.
Q. Where do you live?
A. 5615a Easton.
Q. What is your business?
A. Bakery.
Q. What baker business?
A. Northwest Bakery.
Q. Where is that?
A. 5615 Easton.
Q. What sort of heat do you use to operate your ovens out there?
A. Gas.
Q. Are you presently operating your business?
A. No, I am closed down—no gas.
Q. When was your gas supply turned off?
A. Approximately 1:30 last Friday morning.
Q. Under what circumstances?
A. We were in the process of baking and were left with unbaked goods on our hands which we had to dump.
Q. Did you see or ascertain from some source the telephone number to call the representative of the union emergency crew?
A. I did.
Q. Where did you see that telephone number?
A. I got it out of the paper.
Q. Did you call the number you found in the paper?
A. Yes, I did call that number.
Q. Did someone answer the telephone?
A. They did.
Q. How did they answer, do you recall?
A. I told them got trouble, and they told me—
[fol. 89] Q. The person who answered, how did he describe himself?
A. He said the union office and that's all. They didn't mention any name.

Q. Did you then explain your situation to them?

A. Yes.

Q. Did you request them to come out and turn your gas on?

A. I asked them if they could be of help to me.

Q. What was their reply?

A. They couldn't do anything, and referred me to JEfferson 3-4550.

Q. That the number of the Laclede Gas Company?

A. Yes.

Q. Did you call Laclede?

A. Yes, I did.

Q. What information did they give you?

A. They told me they couldn't be of any help, they were shut down, they had no facilities or men to take care of me.

Q. Did you call the union office more than the once?

A. Yes, I have called them numerous times.

Q. Were you subpoenaed here today?

A. No.

Q. Did you come in voluntarily?

A. I was just in the courtroom.

Mr. Welborn: That's all.

Cross examination.

By Mr. Levin:

Q. Mr. Broderson, all that happened on that occasion is your gas went off, isn't that correct?

A. It went out right in the process of baking.

Q. There was no leak?

A. No, I couldn't say there was a leak.

Q. What you are saying is you have been seriously inconvenienced, is that right?

A. Very seriously.

Q. There was no emergency, or danger of explosion, was there?

A. At the time I didn't know. I was worried exactly what would happen.

Q. The fact is all that happened was the supply failed and you don't have gas?

A. At the very moment I was so worried something might happen, I didn't know.

[fol. 90] Q. But that is all that happened—you had no gas?

A. Yes, but I was left with over a thousand dollars of merchandise.

Q. You have had such an emergency before when you were shut down, haven't you?

A. No;

Q. For other reasons?

A. No.

Q. The City of St. Louis shut you down, didn't they?

A. No, I never was shut down.

Q. Wasn't your product seized by the city on several occasions because of conditions?

A. No.

Q. What was the condition?

Mr. Welborn: I object as being wholly irrelevant.

Mr. Levin: If the Court please, the matter of mere inconvenience or loss of product is no test of the legal rights of the parties.

The Court: What does connection with gas have to do with it?

Mr. Levin: Apparently the plea is made the man couldn't complete the batch of baking and had to throw it out. By the same token, there are other quite proper circumstances under which people who are in business are aggrieved or hurt, but that does not detract from the legal rights of those who are engaged in a peaceful strike. Let me carry that one step further. We will show the Northwest Baking Company has been out of business for all practical purposes for long periods of time relating to the sanitary conditions.

The Witness: I beg your pardon. We have never closed.

Mr. Ely: The objection may be withdrawn.

The Court: He answered it, though.

By Mr. Levin:

Q. Mr. Broderson, you didn't call an independent plumber or anyone else to check on the leak, did you?

A. I did.

Q. And you determined that there was simply a case of the supply failing, is that right?

A. I got different answers what it might be, but nobody told me anything definite.

[fol. 91] Q. But the man you called said there is no emergency, didn't he?

A. I called Laclede. They asked if a leak. I told them no.

Q. But you told the man at the union office a leak, didn't you?

A. Yes, I told anyone it was a leak.

Mr. Levin: That's all.

Redirect examination.

By Mr. Welborn:

Q. Did the man at the union office tell you the union were concerned only with leaks?

A. They told me only emergency.

Q. How much dough did you have worked up?

A. Approximately a thousand dollars worth.

Q. When was this?

A. Last Friday morning.

Q. Have you been able to do any baking since then?

A. No, we have been shut down since then.

Q. How many employes do you have?

A. Forty-two.

Q. What happened to this dough you had there?

A. We had a farmer named Shafer come down and get it.

Q. Sell it to a farmer?

A. Yes.

EDWARD L. HORNER, being sworn, testified:

Direct examination.

By Mr. Welborn:

Q. State your name?

A. Edward L. Horner.

Q. Where do you live, Mr. Horner?

A. University City.

Q. Prior to July 5, 1956 were you employed by the Laclede Gas Company?

A. Yes, sir.

Q. What was your position with the Laclede at that time?

A. Superintendent of Production.

Q. How long have you worked for Laclede?

A. Since June, 1950.

Q. What was the general nature of your duties as Superintendent of Production?

A. I am in charge of the manufacturing plants and the holder stations.

[fol. 92] Q. How many manufacturing plants do you have?

A. Four. And two holder stations.

Q. Are those manufacturing plants in operation at this time?

A. No, sir, only in extremely cold weather.

Q. Is one of your manufacturing plants known as Catalan Street Plant?

A. Yes, sir.

Q. Do you have gas storage at the Catalan Street plant?

A. We have at the Catalan Street plant, propane storage, almost a million and a half gallons, and a one million foot gas holder.

Q. That is what I would call a gas tank, is that correct?

A. Yes, sir.

Q. Mr. Horner, do you have at the present time gas stored in this gas holder at the Catalan Street plant?

A. Yes, sir.

Q. Would you explain as briefly as possible how that gas is contained in that tank?

A. Well, that tank—that is the gas holder now?

Q. Yes.

A. That has three lifts. Normally the lifts would be down. If you start to put gas in it it would start to rise, due to the pressure. First, there is about a 30-foot water tank. As gas enters the holder one lift starts to rise. As it reaches its height it will pick up another lift. Due to a water seal, that will carry gas up until it is full, then there will be a third lift. Like a cup, one picks up the other.

Q. Do you have what is known as a tar seal?

A. No. That is at Station A.

Q. What is this tar seal you have at Station A—is that a small holder?

A. No. That is a piston—or cylinder rather, that a piston rides in. As the gas enters the holder it pushes the piston up. That is a solid steel piston. There is a rubbing bar around the edge that rubs on the side of the cylinder. Between the piston and the rubbing bar there is a flexible connection of canvas. The tar seal covers that with sufficient [fol. 98] tar to keep the gas from coming out. As the piston travels up and down there are certain rough places that will allow a certain amount of gas to come out, and we keep tar there to retain the gas.

Q. How is that tar seal maintained?

A. It depends on electric power. There is a certain amount of tar on the top of this seal and a certain amount of tar down below. As the tar leaks down it is automatically pumped up by electric pumps controlled by floats.

Q. What would happen with respect to this storage tank if the electricity were suddenly shut off?

A. If it was off a sufficient length of time we would lose the seal, and that would allow the gas to leak out of the cylinder and enter the space above which is filled with air and probably cause an explosive mixture there.

Q. Is there any way in which a spark might reach the mixture?

A. If the leak was sufficient and the holder was traveling too fast the piston might become tilted and cause a spark right there.

Q. Between July 1st and July 7th have you in your official capacity made any investigation of tampering with the electric lead-in to the plant there at Plant A?

A. Yes, sir. I believe last Thursday night the wires leading into the plant on the main switch were disconnected, killing the service for this holder, so it had no power.

Q. How long did that power remain off?

A. They got it back on the next morning.

Q. Who replaced that power?

A. I did.

Q. Had a previous investigation been made of the power shut-off?

A. Yes, shortly after it went off the man in charge of the plant went to try to determine the cause of it, and in some way or other he short-circuited it, either by his flashlight, or thinking it was dead, by a wire, and got himself severely burned.

Q. What would have happened had that connection not been restored?

A. In sufficient time we would have lost our seal and the gas escape from the holder.

[fol. 94] Q. What would be the possibility of an explosion?

A. As I explained, if the holder started dropping too fast it might become tilted and scrape the metal and cause a spark.

Q. In your official capacity as operating superintendent have you received since July 1st up to the present time reports which you have acted on of other instances of interference with the operation of Laclede installations?

A. No, I don't know of any other instances.

Q. Do you know how the disconnection was made on the line down there?

A. Yes, three bolts were taken out.

Q. Were the bolts unscrewed?

A. Yes, sir.

Q. What size bolts were they?

A. I would say they are about ⅜-inch.

Q. What is the electric voltage of that?

A. 440.

Mr. Welborn: That's all.

Cross examination.

By Mr. Levin:

Q. You have had power failures before, haven't you?

A. Yes.

Q. You have had power failures there and at other holder stations where you have been superintendent, isn't that correct?

A. Yes, sir.

Q. When a power failure occurs nothing happens instantaneously, is that correct?

A. Yes.

Q. It takes a considerable period of time for that seal to work loose?

A. Yes.

Q. When you talk about the possibility of a spark you have got to assume a great many hypotheses, don't you—one, the tar leaks; two, that the piston tilts; and three, in tilting it might scrape the metal and you would have static electricity—all those things would have to coincide, is that correct?

A. Yes, sir. I don't know it would happen or could happen.

Q. Like a great many things in the realm of possibility, all of these things taken together, such a thing might occur?

A. Yes.

[fol. 95] Q. Is it also true that whatever the cause of power failure, that all power failure of that kind becomes instantaneously known?

A. Yes.

Q. Being instantaneously known, it can be corrected immediately, particularly since electric power is not one of the facilities of Laclede Gas, isn't that right?

A. Generally. There may be major trouble that can't be corrected at once.

Q. But in this instance the electric utility was called forthwith, wasn't it?

A. No.

Q. Who repaired it?

A. The man at the plant went over to investigate the trouble.

Q. But after he investigated it the electric utility was called immediately?

A. No. It was one of our plant wires in our plant.

Q. After the investigation an immediate restoration was made?

A. The next morning.

Q. You say that was all within the confines of your plant?

A. Within our confines.

Q. It has a gate around it and it is closed?

A. Yes.

Q. You have supervision of guards over it now, don't you?

A. There are police there and we have some men stationed there.

Q. They were stationed there that night, weren't they?

A. Yes.

Q. None of your employes were at work?

A. Except these people stationed there.

Q. And no authorized personnel should have been within that fence, isn't that correct?

A. Other than these four men, yes.

Q. You don't know of anybody entering through the fence or through the gate, do you?

A. No.

Q. It was constantly patrolled by the police that night, isn't that true?

A. I assume that. I don't know.

Mr. Levin: That's all.

[fol. 96] **Redirect examination.**

By Mr. Welborn:

Q. But notwithstanding the police patrol and the other things mentioned the wires were disconnected?

A. Yes.

Q. Could they have been disconnected unintentionally?

A. No, because the bolts were gone that were in there. The people working there had no reason to disconnect any wires.

Q. They could be disconnected only by removing the bolt, is that correct?

A. They could have been cut, but it was disconnected by the bolts being removed.

Mr. Welborn: That's all.

Recross examination.

By Mr. Levin:

Q. Could this have been disconnected prior to July 5, 1956?

A. No.

Q. Why not?

A. The pumps were running at four o'clock on that evening, and at ten or eleven there was no power to run them.

Q. All there was there was a disconnection of the joint?

A. Yes.

Q. So, actually, there was nothing traumatic about it—whatever held it under pressure had been removed?

A. Yes, three bolts.

Q. If they had been removed in the month of June, it may not have worked itself loose until July, is that right?

A. The bolts wouldn't have disappeared.

Q. That is an assumption on your part?

A. I couldn't see them.

Q. If they were taken at any time they wouldn't be there, would they?

A. No. However, we had power at four o'clock that same day.

Q. Isn't it true you had a 6-foot wire fence and locked gates topped by barbed wire?

A. No. It is a wooden fence.

Q. But topped by barbed wire, isn't it?

A. I don't think it is, but I am not sure.

Q. You are not aware of anyone that got over the fence, are you?

A. I don't know.

[fol. 97] Q. Did you talk to the officers about finding any unauthorized persons down there that night?

A. No.

Q. All you know, there was a power failure and three bolts missing?

A. Yes.

Mr. Levin: That's all.

Redirect examination.

By Mr. Welborn:

Q. You don't know how they were disconnected or by whom?

A. No.

Q. But they were not disconnected by anyone by your direction or your authority?

A. That's correct.

Q. And the disconnection was not a service of the Laclede Gas Company?

A. No.

Mr. Welborn: That's all.

At this point, 4:35 p. m., court adjourned to the following day, Thursday, July 12, 1956, at 10:00 a. m.

Pursuant to adjournment as above stated, at 10:00 a. m. on July 12, 1956, the trial of said cause was resumed and further proceedings had as follows:

Charles L. Digiovanni, being sworn, testified:

Direct examination.

By Mr. Welborn:

Q. State your name, please?

A. Charles L. Digiovanni.

Q. Spell your last name?

A. D-i-g-i-o-v-a-n-n-i.

Q. Where do you live?

A. Affton, Missouri.

Q. Prior to July 6, 1956, Mr. Digiovanni, were you employed by Laclede Gas Company?

A. Yes, I was.

Q. In what capacity?

A. In the capacity of customer relations manager.

Q. How long have you been employed by Laclede?

A. I have been with Laclede since July, 1925.

Q. What is the general nature of your duties there?

A. Principally customer relations with respect to con- [fol. 98] tacts, serving the customers, telephone contacts, correspondence and personal contacts, receive and arrange for customers' requests for service.

Q. Mr. Digiovanni, since July 1, 1956, have you performed similar duties at the Laclede Gas Company?

A. Yes, sir.

Q. During that time have you been in charge of the reception of complaints from customers regarding the lack of gas supply?

A. Yes, sir.

Q. Would you tell the court how those complaints are handled, Mr. Digiovanni?

A. The complaints have been chiefly "no gas"—"leaks" and "no gas." In order to verify the validity of those calls or reports we call the customers back. Once we ascertain the fact the customer had previously called us we would assume that that was a legitimate "no gas" or "leak" complaint.

Mr. Levin: I will ask that the part of the answer based on assumption be stricken.

The Court: From the words "we would assume" may be stricken.

By Mr. Welborn:

Q. Mr. Digiovanni, since July 1, 1956, has a record been kept by you, or by others under your direction, in the regular course of business, of the calls and complaints received regarding the lack of gas?

A. Yes, sir.

Q. How are these calls recorded?

A. We have a record of the calls received shown on a particular form, and when it has been indicated that a particular block was without service we would then create this ticket, which in turn would be used for marking a map to reflect the areas affected.

Mr. Welborn: Mark that paper for identification as Plaintiff's Exhibit No. 6.

(Thereupon a document was marked for identification as Plaintiff's Exhibit 6.)

Q. I will show you, Mr. Digiovanni, this sheet which has been marked Plaintiff's Exhibit 6, and ask you if that [fol. 99] is the type of record which is made by the Laclede Gas Company, by you or by others working under your supervision, on these "no gas" calls (handing document to the witness)?

A. That's right.

Q. That type of record has been made with respect to the calls since July 1, 1956 in that respect, is that correct?

A. That is correct. May I elaborate?

Q. Yes, sir.

A. In order to clarify, or for the purpose of clarification, I would like to define what I mean by "no gas." It is a situation where there is evidence the customer is deprived of the use of any gas appliance that may be connected to their line.

Mr. Welborn: Mark that as Plaintiff's Exhibits 7 and 8 for identification.

(Thereupon two documents were marked for identification as Plaintiff's Exhibit 7 and Exhibit 8, respectively.)

Q. I show you this document which has been marked for identification as Plaintiff's Exhibit 7, Mr. Digiovanni, and ask you if that is a record of a complaint of "no gas" received by the Laclede Gas Company and which was recorded in the regular course of the operation of the company (handing document to the witness)?

A. Yes, sir.

Q. And it was recorded by someone acting under your supervision, is that correct?

A. Yes.

Q. And this document which has been marked for identification as Plaintiff's Exhibit 8 (handing document to the witness)—is that likewise a record of a complaint which was received by the Laclede Gas Company and which was prepared by someone acting under your supervision, in the regular course of business?

A. That's right.

Q. Mr. Digiovanni, do you have a record or count of the number of complaints similar to those which have been recorded on Plaintiff's Exhibits 6, 7 and 8, that have been received by the Laclede Gas Company since July 1, 1956?

A. Yes, sir.

[fol. 100] Q. How many have been received?

A. There has been received calls amounting to about 15,500.

Mr. Levin: I ask the answer be stricken as not responsive to the question asked, what number of calls they had received and what number of calls "no gas." Earlier the witness had testified the calls were variously "leaks" or "no gas" and the answer is not responsive to the question as I understand it.

By Mr. Welborn:

Q. These calls regarding the lack of gas and the effect of lack of gas, how many such calls did you receive?

A. I would say the orders created were between 2500 and 3000. That does not necessarily represent the number of customers affected, because we may have only—

Mr. Levin: I ask the answer be stricken, not responsive.

The Court: Finish your answer.

The Witness: There may be one order prepared if that represents the entire block, and we have received perhaps a number of customer calls from that very block.

Mr. Levin: I ask that portion of the answer beginning with the voluntary statement be stricken. The question was how many calls had been received—not a speculative

and conjectural answer "There may be." It is in the realm of a hypothetical question.

The Court: That part of the answer beyond the figures may be stricken.

By Mr. Welborn:

Q. You have made a record of some 2500 to 3000 calls, is that right?

A. That's correct.

Q. How many calls have been received during this period from July 1, 1956, on which no record was made?

A. I would say they are approximately anywhere between—

Mr. Levin: This witness has already testified that he can't testify to these things from records made under his supervision by others. The question is objectionable as hearsay. He is presuming to tell what someone else might have participated in.

[fol. 101] The Court: What is the basis you are about to testify to—is it what someone told you?

A. No, I was right there working with them.

The Court: Then that will be overruled.

By Mr. Welborn:

Q. How many calls have been received regarding lack of gas other than those you have made a record of on these slips which have been identified as Plaintiff's Exhibits 7 and 8?

A. I would say approximately ten or eleven thousand.

Q. In addition to the calls which the slips represent, is that correct?

A. That's right. That is represented by the forms created.

Q. Mr. Digiovanni, do you report these things to other operating officials of the Laclede Gas Company—information on these calls?

A. Yes, sir.

Q. Do you report them to Mr. Burgess or someone acting under his supervision?

A. Yes, sir.

Q. Do you know whether or not such calls and complaints are used as the basis for the record of the absence of gas which have been indicated on Plaintiff's Exhibit No. 4?

A. Yes, sir.

Q. Mr. Digiovanni, I will hand you this sheet which has been marked Plaintiff's Exhibit No. 7 and ask you by whom that record was made (handing document to the witness)?

A. You mean the person receiving it?

Q. Yes, sir.

A. Mr. Ed Nelson.

Q. Did he make the record acting under your supervision?

A. Yes.

Q. Did he make that record in the usual course of business of the Laclede Gas Company and acting under your direction?

A. Yes, sir.

Q. And this is the original record of the company on this call?

A. Yes, sir, it is.

Q. What does that record indicate the complaint had been in that case?

A. No gas.

Mr. Levin: From that point on I object to anything fur-
[fol. 102] ther—not that a record was made, but I will object to anything that presumes to purport to speak for the verity or probity of the statement made there as hearsay and based upon alleged statements made by someone else to still another person and in no way binding on these defendants, nor in any way supporting the truth of what is contained.

Mr. Ely: The fact it is made by someone else under Mr. Digiovanni's supervision is not a good objection—kept in the regular course of business.

Mr. Levin: Mr. Digiovanni cannot verify the truthfulness of it. He can only testify it was made by Mr. Nelson. Mr. Nelson couldn't testify to the truthfulness of it—only that

he wrote down certain words. If it speaks for itself, there is no occasion for this witness to read into the record something he cannot possibly prove the verity of.

The Court: Is your objection he was about to read it?

Mr. Levin: Yes, sir.

Mr. Ely: We couldn't be expected to prove any thirteen thousand complaints.

The Court: This objection is he is reading it. That will be sustained. I presume you will offer it?

Mr. Welborn: Yes, sir.

The Court: I will sustain the objection to his reading it, on the basis the record speaks for itself.

Mr. Welborn: I would like to offer in evidence Plaintiff's Exhibit No. 6, which is Laclede Gas Company Form 1231—Work on Consumer's Premises. Town—University City. Date order taken—July 2, 1956. Address—8025 Park Lane. Name—B. Balk.

Mr. Levin: If Mr. Welborn is going to offer the exhibit simply to prove such a record was made by Laclede Gas Company—

Mr. Ely: That is the purpose of it.

Mr. Levin: Let the record show that we in no way admit the truthfulness of any of the statements contained therein as made by anyone; but there being no objection to the [fol. 103] admission, there is no occasion to read it, because the exhibit is the best evidence.

The Court: It will be received.

OFFERS IN EVIDENCE

Mr. Welborn: I will offer that as Plaintiff's Exhibit No. 6.

Said Plaintiff's Exhibit 6, offered and admitted in evidence, is in words and figures as follows:

(Here insert Plaintiff's Exhibit 6.)

Mr. Welborn: I will offer in evidence Plaintiff's Exhibit 7, Laclede Gas Company Form No. 1231, dated July 2, 1956.

Mr. Levin: No objection, subject to the qualifications and limitations, your Honor.

The Court: It may be received.

Said Plaintiff's Exhibit 7, offered and admitted in evidence, is in words and figures as follows:

(Here insert Plaintiff's Exhibit 7.)

Mr. Welborn: I will offer in evidence Plaintiff's Exhibit 8, which is a Work on Consumer's Premises, dated July 1, 1956.

Mr. Levin: No objection, subject to the same limitations, your Honor please.

The Court: It will be received.

Said Plaintiff's Exhibit 8, offered and admitted in evidence, is in words and figures as follows:

(Here insert Plaintiff's Exhibit 8.)

Mr. Welborn: I would like the Court's permission to read these into the record.

The Court: They have been admitted. They are in evidence.

Mr. Welborn: All right, sir.

[fol. 104] Mr. Ely: If they were read into the record at that point, your Honor, so the Court would not later have to take the voluminous record in order to determine what exhibits had been read.

Mr. Levin: We are hearing a matter before the Court in true judicial manner—not in a public forum.

Mr. Ely: This is a public forum, because it is a matter in the public interest.

The Court: All right, they are in evidence.

By Mr. Welborn:

Q. Mr. Digiovanni, have you also kept a record of calls regarding leaks which have been received since July 1, 1956—have you kept a record of the leaks?

A. Yes, sir.

Q. How many leak calls have been received since July 1, 1956, do you know?

A. This is an estimate—say around 1500.

Q. What information was given to callers about leaks and about there being repairs, if any?

A. We expressed our sincere apologies at being unable to serve the customer because of lack of personnel, no one to do the job; but we did record the complaints.

Q. Mr. Digiovanni, may I ask you, calling your attention to Plaintiff's Exhibits 7 and 8, whether or not the complaints represented by those exhibits are similar to and typical of numerous complaints that have been received during the course of this strike?

A. Yes.

Mr. Levin: I object as calling for a conclusion of the witness.

Mr. Welborn: That's all.

Cross examination.

By Mr. Levin:

Q. Were you working at Laclede Gas Company at the time of the strike in 1935?

A. That's right.

Q. Laclede at that time served the entire City of St. Louis, did it not?

A. That's right.

Q. And in the year 1935 there was a strike that lasted three and a half months, wasn't there?

[fol. 105] Mr. Welborn: I object to any testimony about a strike that occurred in 1935, being too remote, having no bearing.

The Court: What is the connection?

Mr. Levin: The plea is made that there is a great emergency in this gas system. The very same system, in 1935, there was a three and a half month strike in 1935, and matters were handled in precisely the same fashion as they are now, without, as far as we know, the intercession of this so-called emergency law, and without great danger or damage or anything other than inconvenience to a certain segment of the population.

The Court: There wasn't any such law in 1935.

Mr. Levin: No.

The Court: Sustained.

By Mr. Levin:

Q. Mr. Digiovanni, how many of these ten thousand calls you didn't make a record of were duplications?

A. I can't tell you.

Q. There was a considerable number?

A. I couldn't tell you.

Q. Were there any duplications? A. I don't know. We didn't record the duplications.

Q. How did you know what the calls were?

A. Because the block was affected, too, and that may include fifty or a hundred customers, because there could be an apartment building housing more than forty-eight families.

Q. You don't know the nature of those calls, do you, the ten thousand you didn't record?

A. That is "no gas."

Q. If Mr. John Smith called several times several days in a row to ask when he would get gas—

A. Yes, subsequently.

Q. Those are part of the ten thousand calls?

A. No.

Q. How many were?

A. I couldn't answer that. I don't know.

Q. Did you keep records on that?

A. Will you repeat that?

(Question read.)

[fol. 106] A. No, we didn't.

Q. Mr. Digiovanni, you are in charge of leak calls generally, aren't you, during regular business?

A. Yes.

Q. What did you do whenever leak calls came in from Park avenue east of Twelfth street in April and May of 1956—those are still unattended to, aren't they?

A. I can't answer.

Q. Isn't it true that leak calls are generally put on a leak board, if there is a pipe system out of doors, and piled up until you get around to it?

A. No. Leak reports are handled immediately. They are considered emergency calls. On receipt of a call the orders are time-stamped and go to the department that will execute the job in the field.

Q. Is that true of all street leaks?

A. There is an immediate check made to determine the seriousness of a leak. A phone call received at the Forest Park office, which is our central service building, regarding a street leak in the county, reaches the county office within five minutes of the time of the receipt of the call.

Q. Isn't it true the leaks at 5400 block Eddy in February or March three months?

A. I can't answer.

Q. How long did the leaks accumulate on Lindell from Kingshighway to Skinker?

A. I wouldn't know.

Q. For a long period of time?

A. I couldn't answer that.

Q. There were leaks permitted to accumulate for a long period of time on Lindell, to Skinker?

A. All leaks are taken care of as promptly as possible, depending on the seriousness and the time they are received.

Q. What happens on a Fourth of July week end that falls on a Sunday and Monday, how many people do you have in the emergency crew?

A. What category of business?

Q. How many people do you have?

A. That is not under my jurisdiction, therefore I can't answer that.

[fol. 107] Q. You know there is only one truck downtown, don't you?

A. I don't know.

Q. Is it because you are not permitted to, or you don't know?

A. No, I don't know.

Q. What is true in the county so far as the leak crew is concerned over the long week end?

A. I don't know.

Q. When this strike began you know, of course, the union had set up leak crews for emergencies, city and county?

A. I don't know that.

Q. Did you read the paper?

A. Yes.

Q. Did you notice three telephone numbers inserted?

A. Yes, I read it.

Q. You knew in the papers there was information that the union had set up three telephone numbers to call in event of emergency?

A. Yes, I read that.

Q. You knew that was true, didn't you?

Q. No, I didn't know.

Q. You knew this emergency crew had been taking care of emergencies, didn't you?

A. No.

Q. Are the dispatchers under your jurisdiction?

A. No.

Q. Don't you know the dispatchers at the Forest Park office called the union emergency crews since July One?

A. No.

Q. Who has been taking care of the emergency leaks within the household?

A. We haven't been able to take care of them.

Q. Isn't it a fact the police department and fire department have been calling on the emergency leak crews?

A. I don't know.

Q. You didn't make it your business to inquire?

A. No, I didn't hear about that.

Q. You are only concerned with calls coming in, is that right?

A. Yes, primarily.

Q. Did you ever refer any of these people to the numbers listed in the newspapers, and which you knew?

A. No.

Q. In other words, you were not concerned about tak-
[fol. 108] ing care of the leak through the emergency crew, is that right?

Mr. Ely: Object as argumentative.

The Court: Sustained to the form.

By Mr. Levin:

Q. Despite the fact you knew there were emergency crews standing by, and three telephone numbers available, you never did call on the emergency crews available to do this job, did you?

Mr. Ely: I object to that.

The Court: Objection sustained to the form.

By Mr. Levin:

Q. You knew of the three telephone numbers published in the paper for emergency service?

A. I read about it. I didn't know they existed.

Mr. Ely: Mr. Levin stated yesterday that the emergency crews consisted of fourteen striking employes of the Laclede Gas Company. I don't think it would be too unusual that an official of Laclede Gas Company would hesitate to call a striker when the nature of the complaint was to take care of the emergency.

Mr. Levin: If Mr. Ely will so stipulate and withdraw the objection I will accept that stipulation.

Mr. Ely: That is silly.

The Court: All right, let's proceed, gentlemen.

By Mr. Levin:

Q. You read those telephone numbers in the paper?

A. Yes.

Q. Did you thereafter, in response to any one of these numerous calls that you say came in under your supervision, ever call any one of these numbers, or cause any one of those numbers to be called, to take care of an emergency?

A. No, sir.

Q. How many people are manning your switchboards since July One?

A. About four.

Q. All at one time?

A. Yes, all at one time.

Q. Is that during twenty-four hours a day?

A. We have four on two 12-hour shifts.

Q. What are the shifts and the hours?

A. 6:00 a. m. to 6:00 p. m.

[fol. 109] Q. Are they all at Laclede regular posted number?

A. Yes, the regular customer service telephone board.

Q. At 1017?

A. 3950 Forest Park.

Q. Is that where your dispatchers are also located?
A. Yes.
Q. Your switchboard is relatively close to your dispatchers, is that right?
A. Yes, across the office.
Q. Don't you know that your dispatchers did call these numbers that you saw listed in the newspaper for these emergency services since the inception of the strike on July One?
A. No.
Q. You are not aware of that?
A. No.

Mr. Levin: That's all.

Redirect examination.

By Mr. Welborn:

Q. Since the filing of this suit on Monday has the Laclede Gas Company continued to receive calls regarding lack of gas?
A. No, sir, there has been a decided drop.
Q. Has anyone in the Laclede Gas Company authorized you to call on strikers of Laclede Gas to take care of the business for Laclede Gas?
A. No, sir.

Mr. Levin: I submit that is a leading question.
The Court: The form of the answer is objectionable, Mr. Welborn. Sustained to the form.

By Mr. Welborn:

Q. I will ask you, Mr. Digiovanni, whether anyone has authorized you to call the employes on strike to take care of any leaks reported, or any other emergency situation in connection with the operation of Laclede Gas Company?
A. No, sir.

Mr. Welborn: Mark that, please, as Plaintiff's Exhibit 9.

(Thereupon a document was marked for identification as Plaintiff's Exhibit 9.)

Q. Mr. Digiovanni, I will show you this document which has been marked Plaintiff's Exhibit No. 9, and ask you if that is a record made in the usual course of operation of [fol. 110] the business of your company by someone acting under your supervision of a complaint of "no gas" (handing document to the witness)?

A. Yes, sir.

Q. That was received on July 1, 1956, is that correct?

A. Yes, sir.

Q. It was from whom?

A. From Dr. C. Jue at 4203 Olive Street.

OFFER IN EVIDENCE

Mr. Welborn: I will offer in evidence Plaintiff's Exhibit 9.

Mr. Levin: I object to the offer as to the verity of any of the information contained on it. I have no objection to its being offered as having been received in the regular course of business, but it is not conceded that it is agreed to the truthfulness of anything appearing thereon.

The Court: It may be received.

Said Plaintiff's Exhibit 9, offered and admitted in evidence, is in words and figures as follows:

(Here insert Plaintiff's Exhibit 9.)

Mr. Welborn: That's all.

Recross examination.

By Mr. Levin:

Q. Mr. Digiovanni, when you got this paper termed Exhibit 9 you never did call upon anyone to take care of that emergency, did you?

A. That's right.

Q. You knew, did you not, that such a condition would be taken care of by members of Local 8-6?

A. I didn't know that. We had no personnel to take care of those calls.

Q. So long as Laclede didn't have employes on its pay roll to take care of it you were not concerned with what happened, is that right?

A. That is not the point.

Q. Do you remember all what you read of that newspaper account?

A. I don't just remember what the wording was verbatim.

[fol. 111] Q. Give me your best recollection what you read?

A. Oh, something about calling some phones at some headquarters, that calls can be put in for emergency service.

Q. You did know that was in the newspaper?

A. Yes.

Q. And on this occasion you did not refer the caller mentioned in Plaintiff's Exhibit 9 to the place where he could get that emergency service?

A. No.

Mr. Levin: That's all.

Redirect examination.

By Mr. Welborn:

Q. Mr. Digiovanni, have you any information from any source that the so-called emergency crews were available to turn on gas?

A. The information we received was that customers would call the Laclede board and say they had called headquarters with respect to "no gas" service and were referred to Laclede Gas Company.

Q. All your information was that customers with "no gas" service calls were to be referred to the company?

A. They were not considered emergency, however.

Mr. Welborn: That's all.

Mr. Levin: No further questions.

Mr. Welborn: I would like to recall Mr. Burgess to the stand.

The Court: Very well.

ALLEN H. BURGESS, being recalled, testified further:

Direct examination.

By Mr. Welborn:

Q. Mr. Burgess, you were sworn and testified yesterday?
A. Yes, sir.
Q. Have you ever received any formal notification from the strikers, in writing or orally, or any representative of them, that they have emergency crews available to assist customers of Laclede Gas Company in the present strike?
A. We have not.
[fol. 112] Q. I will ask you whether or not, immediately prior to the workers going out on strike, or right at the time, any request was made by you to any of the employes or any official of the union for emergency assistance from the strikers?
A. I made a request of Mr. Ramsey, our vice-president in charge of industrial relations, to ask the union what their position would be.

Mr. Levin: That is hearsay, not binding on us. Ask that be stricken.
Mr. Ely: They claim they had an emergency crew, and I think it is time to testify to any conversation he had with any official of the union.
The Court: I think so, too, but he is talking about a conversation with Mr. Ramsey.

By Mr. Welborn:

Q. Did you have any conversation with any official or any member of the union?
A. No, not previous to the strike.
Q. And did you have any conversation with anyone regarding that subject?
A. Yes, sir.
Q. With whom?
A. Mr. Ramsey.
Q. And he is the industrial and labor relations man of the Laclede Gas Company, is that correct?
A. Yes, sir.

Mr. Welborn: That's all. I have one more question. I m sorry.

Q. Mr Burgess, you have a telemetric register throughout the service of Laclede Gas Company?

A. Yes.

Q. What is that technically known as?

A. Telemetric control. It is operated by telephone wires from the point of control to our Forest Park office.

Q. These telemetric controls record the gas pressure?

A. Yes, the pressure both from the inlet and outlet, the state of the regulator. They are able, through other controls, to raise and lower that pressure.

Q. Where are these telemetric controls located?

A We have one at Jefferson and Crittenden, one at Manchester and Benton Terrace, at our Catalan Street station, and Ivory, and one at Station G.

[fol. 113] Q. Are these telemetric registers above ground or below ground?

A. The control box is above the ground, and the steel box locked with a special lock, but the regulator and most of the controls are in a vault.

Q. Is there a key on this locked box?

A. Yes.

Q. What kind of key is that?

A. An ordinary—I don't remember the type of lock—it would be an ordinary key to a lock, but the same key will open all of our locks on our system, practically.

Q. And what would happen if those telemetric controls are tampered with?

Mr. Levin: There is no evidence of any tampering.

Mr. Welborn: I think I will tie this in.

The Court: You do have some evidence?

Mr. Welborn: Yes, sir.

The Court: On your statement that it will be connected up the objection will be overruled, with leave to strike if it is not.

A. Tampering with the telemetric control will make it impossible for the operators of the controls at the Forest Park office to control the pressure. It also makes it im-

possible for them to know what the pressure is at that point.

Q. What would be the result of a sudden increase in pressure?

A. It could put too much pressure on a low-pressure or medium-pressure system—it could cause a rupture of the pipe line.

Q. What could it cause on the domestic gas line?

Mr. Levin: I repeat all my objections to this hypothetical question as to what could be the effect of a certain condition.

The Court: That will be overruled on the same basis.

A. The effect of tampering with controls of a low-pressure regulator could be most serious. Putting high-pressure on a low-pressure would increase the gas pressure, which would increase the flames on any burning appliance. If it [fol. 114] got high enough it could rupture the meters, causing gas to flow in the person's home or basement, thereby causing a very hazardous condition.

Q. Mr. Burgess, I will ask you whether, if an offer had been made to Laclede Gas Company by the union to set up emergency crews, if it would have been referred to you in your capacity as operating vice-president of Laclede Gas Company?

Mr. Levin: I object to that as being highly hypothetical. There is no showing that this would necessarily have been communicated to this witness.

Mr. Ely: In his capacity as operating vice-president?

Mr. Levin: We are in position to sponsor a witness who will state the offer was made direct to Mr. Ramsey and accepted by Mr. Ramsey.

Mr. Ely: I don't know how, by offering to prove one thing you can prove something in our case.

The Court: Objection sustained.

Mr. Welborn: I have no further questions.

Mr. Levin: I ask, first of all, your Honor, that all of the testimony with reference to the telemetric system be stricken, there having been not an iota of evidence to show the tampering was a union tampering.

The Court: That will be denied. Mr. Welborn said he would connect it up.

Recross examination.

By Mr. Levin:

Q. Where are your telemetric controls, again?

A. There is one at Jefferson and Crittenden Street, one at Manchester and Benton Terrace, several controls at our Catalan Street station, and Ivory station, and Station G.

Q. I will show you a paper I will have marked as Defendants' Exhibit I—(thereupon a document was marked for identification as Defendants' Exhibit I)—look at that, please—handing document to the witness)—isn't it true that prior to the commencement of the strike Laclede had [fol. 115] already, in anticipation of a strike, made arrangements with the superintendent of police in St. Louis County and with the police department of the City of St. Louis to man and protect these telemetric control places?

A. Yes, sir.

Q. And that at all times these control places have been patrolled twenty-four hours a day by the Metropolitan Police Force in the City of St. Louis and by the St. Louis County police and the other officials in St. Louis County?

A. Well, they apparently did the best job they could. They told us it would be impossible for them to give us twenty-four-hour protection.

Q. How many special county police officers is the Laclede now paying for?

A. I don't know.

Q. What is your best estimate of the number of county police officers you are paying for?

A. I don't know.

Q. There are a number, aren't there?

A. Yes.

Q. They are all at the telemetric control stations, aren't they?

A. No.

Q. Where are they?

A. I don't know where they have been assigned. The police department of St. Louis County assigns them.

Q. All this was done before July 1, 1956, wasn't it?

A. Yes.

Q. How long before July 1, 1956?

A. About two days.

Q. So on June 28th the Laclede expected a strike, is that correct?

A. Yes.

Mr. Levin: That's all.

Redirect examination.

By Mr. Welborn:

Q. Why did you do it on June 28th?

A. Since June 18th, when the negotiations broke off as far as wages, fringe benefits and other normal contract issues—

Q. Why were those arrengements made with the St. Louis and county police?

A. For protection purposes.

Mr. Welborn: That's all.

Mr. Levin: I would like to offer in evidence Defendants' [fol. 116] Exhibit 1. There is some writing on the back which is quite irrelevant to the matter. I would like to ask leave to substitute a photostatic copy.

Mr. Welborn: I am objecting to the offer of this into evidence. This witness didn't sign that document. It is signed by the superintendent of the St. Louis County police. The witness testified regarding his recollection of the document.

Mr. Levin: I think the objection is well taken. I will withdraw the offer.

The Court: I do, too.

Mr. Welborn: That's all.

Lieut. Thomas Moran, being sworn, testified:

Direct examination.

By Mr. Welborn:

Q. State your name?

A. Thomas Moran.

Q. Member of the St. Louis Police Department?

A. Yes, sir.

Q. You are a Lieutenant, is that correct?

A. That's right.

Q. To what particular unit or department are you assigned?

A. In the Secret Service Division, command the bomb and arson squad.

Q. Since July 1, 1956, have you had occasion to investigate incidents connected with or arising out of the Laclede Gas strike?

A. Yes, I have.

Q. Since July 1, 1956, have you investigated incidents of the injection of water into the Laclede gas system?

A. Yes, I have.

Q. How many such investigations have you made?

A. I have made two where the location was supposedly the place of the injection of water into the pipes.

Q. What two occasions were those?

A. One was at the Hawks Athletic Club at 5024 Patterson avenue and the second was at a rooming house at 2139 Eugenia street.

[fol. 117] Q. When did you make the investigation at the Hawks Athletic Club?

A. Last Thursday, last week.

Q. That would have been the 5th of July, is that correct?

A. Yes. That would have been Friday, the 6th. I will take that back.

Q. At that time did you find the connection between the gas system and water system?

A. No, sir. After I got the report of the occasion at that location I was quite a distance away and I contacted the Second District to send the uniform men to that address to control it until I got there. The uniform men arrived before I did, and at the time of their arrival the basement was in good condition. There was no hose present. However, I did interview the man in charge—

Mr. Levin: Your Honor, from this point on I would respectfully object any investigation he had with someone is hearsay, not binding on these defendants. The question was what condition did he observe.

Mr. Welborn: Yes, I will withdraw the question.

Q. When did you make the investigation on Eugenia street?

A. Saturday, the 7th.

Q. On July 7, 1956?

A. Yes, that's right.

Q. At what time of the night was it?

A. About one o'clock in the afternoon.

Q. This is a boarding house, is that correct?

A. Rooming house.

Q. Did you examine the gas connections at the rooming house at that time?

A. Yes, I did, the gas meter connections in the basement.

Q. Explain what you found with respect to the gas connection?

A. The water was disconnected from the gas service line and had been turned around. I found a green plastic hose connected to the gas service line where the meter had formerly been connected. There was about fifty feet of this hose that ran from the front of the basement to the rear, where it was attached to a water tap. The water tap was still open when I made the inspection.

[fol. 118] Q. Did you make any other finding, any other instance of water being injected in the gas line?

A. No, those are the only two places where we have investigated as to those addresses being the source of the water.

Q. Have you made any other investigations in connection with the strike?

A. Yes, I have.

Q. Did you investigate the matter of the telemetric control on Manchester Avenue?

A. Yes, I did.

Q. What did you do in connection with that investigation?

A. I contacted Deputy Fire Chief Olsen, who had been at the scene the night the control was damaged—

Mr. Levin: I object to that testimony as being a conclusion; no foundation was laid.

The Court: Sustained to that.

By Mr. Welborn:

Q. I just want the findings, what you determined in your investigation.

A. It was necessary for me to contact Deputy Chief Olsen because he had the key to the lock the fire department had put on the telemetric.

Q. Then what did you do?

A. Chief Olsen unlocked the control box for me. I wanted to examine the damage in the box.

Q. What did you observe on your examination?

A. I found that the tube or line in the lower left-hand corner of the box had been pulled loose and broken from its original position; and right about three inches from the point where the pipe was broken was a valve; this valve had been turned off by gas company employes the night-before—that is, striking employes—the night of the incident. It was in the "off" position when I examined it.

Q. Did you see any striking employes while you were out there?

A. No, sir. I was out there the morning after the incident.

Q. Have you made any other investigation in connection with this strike?

A. I made a further investigation of that particular incident.

[fol. 119] Q. Where did you make further investigation?

A. 3529 Franklin Avenue.

Q. What place is that?

A. A union office.

Q. What, if anything, did you find in that investigation?

A. I went to the union office to ascertain if the union had directed a crew out to that particular address who performed any work, and what kind of work was performed.

Q. Did the union have any record of any crews being assigned there?

A. They had no record, but I talked to the man in charge, who informed me he had sent some men out on that particular location after receiving a call. He gave me the names of the men that went out there, and those names did correspond to our police report. At the time I wanted

to find out if their records would indicate the time they received the call, and who it was from. They informed me up to that time they had not been keeping that kind of a record.

Q. Have you made any investigation regarding complaints regarding gas odors?

A. Yes, we have.

Q. What have you found in connection with such investigations?

A. There is a strong odor that people assume to be gas, or think it is. It is in the air in the neighborhood. In summer time their windows are open, they get this odor and they call the police department, they are alarmed about escaping gas. Our investigations that have been made have convinced us it is not escaping gas that is giving this odor throughout the neighborhood, but it is odor from the odorant that has been placed in various neighborhoods.

Q. Have you found any continuance of such odorants on the street or in other areas?

A. I haven't, but they have been forwarded to me for disposal.

Mr. Levin: I ask it be stricken as not responsive.

The Court: The first part is responsive—"I havent." The rest may be stricken.

[fol. 120] By Mr. Welborn:

Q. Have you made any other investigations in connection with this strike, Lieutenant?

A. Yes, I have.

Q. Tell what they are, please, what you found?

A. We had an investigation of an incident at 3615 Chevrolet, a small pane of glass in the front door had been broken by rocks thrown up against the door; some wires had been pulled from a control box located on the southeast corner of the company property. I investigated the damage to the telemetric control box at Jefferson and Crittenden.

Q. What did you find at that location?

A. The control box is a small metal box about sixty feet high on a telegraph pole at the corner of the alley east of

Jefferson. Someone had removed a lock from the lid of the box and had reached in and twisted a contact of some sort inside of the box that made it inoperative.

Q. What other investigations have you made?

A. The incident at the plant at Second and Rutger where a police officer and a plant employe were injured.

Q. At the time of that incident were the police officers on duty at that installation?

A. They were on duty at the installation, but not in the vicinity of that incident.

Q. Did you examine the place where this wire had been disconnected?

A. Yes, I did.

Q. Where was that with relation to the place the police officers were?

A. At that particular time we only had a two-man detail. The detail was on Rutger street in front of, I presume, this office building, where there are gates that enter into the property on both the north and south side of Rutger street. The switch would be in the northwest corner of the property adjacent to Second and Convent, a slight distance south, just inside of the board fence, and the switch is fastened on the north side of the brick building. It is a rather low fence and could not be seen by the police on the detail at that point.

[fol. 121] Q. How high is the fence?

A. Six feet high or a little less.

Q. Have you investigated any other?

A. Well, I have been on—yes, I investigated an incident at the office of the gas company on Forest Park where a stench bomb was thrown through the window.

Q. That is concerning which Mr. Burgess testified. Did you hear him?

A. He may have. I didn't hear him.

Q. What did you ascertain in that investigation?

A. The stench bomb went through the window, the second window west of the east corner of the building. It is a double-strength glass, on the inside has a venetian blind. The hole in the glass was more or less the type made by a projectile—fairly clean hole—it didn't break out or shatter the complete pane of glass. After passing through

the glass, through the venetian blind, about eight feet from the sidewalk, it traveled about sixteen feet through the room and came in contact with a steel door jamb at a point about two feet above the floor, and it shattered on impact there and dented the steel door jamb. It had contained a liquid odorant which, as far as I can tell, is similar to the smell—which is an odorant used in gas.

Q. Have you made any other investigations?

A. I believe those are about the only incidents I can recall.

Mr. Welborn: That's all.

Cross examination.

By Mr. Levin:

Q. Fifty feet of rubber hose makes a fairly large package, doesn't it?

A. Not of this plastic hose. It is a real narrow hose.

Q. Can you show by your arms how large a package it would make?

A. Yes, it would be a roll about that big (indicating), that you could carry very easily.

Q. This hose extended from the outside faucet through the window into the basement, is that right?

A. No, the faucet was in the rear part of the basement.

[fol. 122] Q. Who lived in the house?

A. There was a landlady by the name of Bessie Black.

Q. Did you find out, in your investigation, what hostility she had had with anyone?

A. She was not home at the time. Another tenant said she had left possibly ten or fifteen minutes before we arrived. I didn't know where she was. I was at the scene about an hour and half and she didn't return in that time.

Q. Did you go back to make a further investigation, if you wanted to see that Bessie Black?

A. No, I have not had a chance to see her since that.

Q. Since a week ago you haven't gone back to determine if this lady had some people—

A. No, I haven't seen her.

Q. Don't you usually do that in this type investigation to determine who the responsible party is?

A. I would have to answer that yes or no. You have to take into consideration our limitations. I am right now by myself. I am running from one plant to another and I have to oversee the details at all the various pieces of Laclede property where we have details.

Q. There is no evidence you have connected any one of these unions or its members with these incidents?

A. No, the only connection I have in my investigation that would connect the gas company to this is the fact that at the end of the hose that is attached to the meter is a fitting that is gas company property, would have to have been picked up or used by somebody familiar with the operation of the gas company.

Q. You know how many former employes of Laclede are living in the St. Louis area today?

A. No, sir.

Q. Did you make any attempt to find out if any of these former employes were tenants of Mrs. Black?

A. Yes.

Q. Or had any hostilities towards her?

A. Yes, I did.

Q. You never interviewed Mrs. Black, though?

A. I couldn't find her. I interviewed tenants in the building and neighbors on both sides of the street.

[fol. 123] Q. That is the only incident of that kind that has come to your attention?

A. The actual recovery of a hose, yes.

Q. You knew, did you not, on the evening of June 30th, about the emergency crews of the union set up to respond to all emergencies?

A. No.

Q. Didn't you have a conversation with me last Saturday indicating you were well aware of that, and had been in contact with the union?

A. That wasn't June 30th.

Q. When did you first learn that?

A. When I saw an ad in the paper.

Q. July 1?

A. Possibly.

Q. You knew on July 1 the union had these emergency crews standing by for all emergency service, didn't you?

A. No. The mere fact I saw it in the paper doesn't—I knew there was an advertisement in the paper.

Q. Did you make any attempt to verify the correctness of the ad?

A. Not at that time, no.

Q. Did you go to the company and ask them if it was all right?

A. I had conversations with them relative to if there was an arrangement made between the company and the strikers to do that work.

Q. You did, however, see an ad appearing on the first day of the strike?

A. Yes.

Q. And after this incident on Manchester avenue you did know the union emergency crew had gone out and turned off the valve?

A. No, I didn't know that.

Q. The valve was turned off and you testified it was turned off by former gas company employes the night before?

A. I didn't know they were an emergency crew from the union.

Q. After that happened you checked with the union?

A. Yes.

Q. Isn't it true your only request of them was they keep a more detailed record of the emergencies on which they went out?

A. No. I tried to tell it to them by reason for being there was to check on the people who showed up to do the work. One way we could check if they had a card record in the [fol. 124] union office of the call, who received it, who dispatched the crew out there, and the names of the men on that crew. Further, I pointed out as police officers protecting this property we would have no way—in fact, we would not permit anybody to do any work on the basis they were striking employes. I suggested they have some sort of an official paper from the union stating they were working as emergency crews at that particular work, so the police officers would be able to distinguish between emergency men and the other two thousand men out.

Q. The officers of the union agreed with your suggestion and said they would comply?

A. Yes, from then on.

Q. This was the first time you had asked them to follow this procedure?

A. Yes.

Q. Is it true on that same day you already had a conversation with respect to the emergency crews, and that they would carry on as before maintaining that record?

A. Yes.

Q. And you agreed to that method of handling it?

A. As far as identifying the men which they sent out, and so forth.

Q. And as far as the emergency?

A. Yes. I am not in position to give them permission to do it. But as far as attempting to do what you wanted to do, my suggestion was the only way you could do it without running the possibility of your men being arrested for tampering.

Q. You are no chemist?

A. No.

Q. You have no training in that science, have you?

A. No.

Q. Isn't it true that at any time there is any shut-down of the gas system you are flooded with calls of leaking gas and escaping gas?

A. We have calls, but nothing like we have had since this came up.

Q. But isn't there a very strong psychological urge on people to call the police department at those times?

Mr. Ely: That would be a conclusion of the witness—"psychological."

[fol. 125] The Court: Sustained to the form of the question.

Mr. Levin: It is true, though, is it not, in any situation involving a labor dispute of this kind; the police department receives a vastly increased number of calls?

A. During disputes, yes, sir.

Q. You have not had any complaint of any burning gas or exploding gas, have you?

A. No, sir.

Q. That would be true in all the twelve days since the strike began, is that correct?

A. Let me correct that. We did have an explosion night before last. My crew ascertained that was from a defective flue, but it was an explosion call.

Q. The emergency crew of the union responded also on that occasion, did they not?

A. I can't answer that. I wasn't there at the time.

Q. But the situation was quickly under control, is that correct?

A. Yes, that was an explosion within a house, and we automatically answer all explosion calls.

Q. Were you with the arson and bombing squad at the time of the Laclede Gas explosion at the Field House in Forest Park about '50 or '51?

A. Yes, I was.

Q. Where, I believe, several people were killed and a number seriously injured?

A. One dead and a number injured.

Q. That occurred during mid-day, did it not?

A. Yes.

Q. No strike?

A. That's correct.

Q. Full crew at work, is that correct?

A. Of the gas company?

Q. Yes.

A. I presume. I don't know.

Q. Regular employment was going on?

A. Under normal conditions.

Q. Actually, Laclede workers were working at the time of the explosion several hundred yards from the site of the explosion?

A. That occurred during the change-over period.

Q. Were the employes in the vicinity of and working [fol. 126] several hundred yards from the site of the Field House?

A. Yes, the change was going on right in that vicinity.

Q. There was no labor dispute, isn't that right?

A. No.

Q. No personnel difficulties between the company and its employes, is that correct?

A. Yes.

Q. The company at the time was using exactly the same product it is using now—natural gas—is that right?

A. It was in the change-over. When they changed I believe it started up as a mixture of both, and eventually wound up all natural gas. I can't say it was the same identical product then as now.

Q. In your investigation you know, do you not, the natural gas they use is a methane gas?

A. Yes.

Q. Isn't it true that methane gas is one that is considerably lighter than air?

A. Yes, it is.

Q. That methane gas whenever released out in the open will rise in the air and dissipate itself?

A. Yes, but the manner in which it dissipates depends on the humidity and weather conditions.

Q. And actual danger, if there be, is generally in areas that are closed—the household, or business, is that right?

A. Yes. Escaping gas in the open is not dangerous.

Q. You know, of course, that the emergency crews of the union are set up to respond to all emergencies within a confined area or otherwise—is that what they told you?

A. That the union emergency crews?

Q. Yes.

A. That they would only handle definite leaks, and not the investigation of odors; but where they got a call stating it was a leak they would send a crew.

Q. As far as you know, they do send these crews, isn't that right?

A. The only crew I knew of responding to a call was Manchester.

Q. On Rutger street—that fence is a tight board fence, isn't it?

A. Yes.

Q. It is approximately six feet tall?

A. Approximately.

Q. It is capped by several strands of barbed wire on top, is that right?

A. I don't think there is any there.

[fol. 127] Q. Did you examine to see whether there was barbed wire?

A. I was right there and looked at the fence. There is barbed wire around other places, but it is my recollection there is no barbed wire around this wooden fence.

Q. You are not prepared to say?

A. No. I think there isn't.

Q. Did you make any investigation to determine any external evidences of anyone entering the barricade?

A. Yes, I made an investigation of the whole property after that incident.

Q. Find any footprints on there?

A. No evidence of entry, but I found so many places where entry could be made easily and I tripled the detail.

Q. Places where there could be possible entry?

A. Where entry could be gained, so that I tripled the detail.

Q. You are not prepared to say any unauthorized person entered the plant, or anything?

A. I couldn't prove it, no.

Q. You had a two-man detail on duty at the time the emergency call came in?

A. Yes.

Q. Did the company proceed at once to repair the damage that was observed?

A. I think it was in an attempt to get service back that the employe and the policeman were burned.

Q. Actually, wasn't it only in an attempt to see what was wrong when somebody got burned when someone put a metal flashlight up against it?

A. I have never received any evidence of a flashlight.

Q. Mr. Horner may have been mistaken in what possibly might have happened?

Mr. Ely: Object to that.

The Court: Sustained to the form.

Mr. Levin: There has been some testimony by Mr. Horner, the superintendent of that plant, that he understood the injury to these men occurred when the men of the company made the investigation and probably used a flashfight and caused contact.

[fol. 128] Mr. Ely: I object to that.

The Court: It is improper to ask another witness about another witness's testimony. Sustained to the form.

By Mr. Levin:

Q. In any event, when was the repair made, Lieutenant Moran?

A. To the best of my knowledge it would have been permanently put back in service some time early the following morning.

Q. This occurred at what time?

A. I think about 8:30 in the evening.

Q. The company waited from 8:30 p. m. until the following morning before commencing repairs, is that right?

Mr. Welborn: I object unless the witness knows.

The Court: The form is objectionable in any event.

Mr. Ely: Further it is immaterial.

Mr. Levin: There is testimony about an emergency. I think it pertinent to find out whether it was so emergent that a 12-hour—

The Court: He may testify if he knows.

The Witness: The time I gave you was wrong. The police report states 11:45 p. m. as when the incident happened.

By Mr. Levin:

Q. When was the repair made, if you know?

Mr. Ely: I object.

By Mr. Levin:

Q. Does your police report show when the repair was made?

A. No, sir.

Mr. Ely: We would be glad to have the police report in evidence if Mr. Levin wants it.

The Court: Mr. Ely, if you have an objection make it, otherwise I don't want comments.

Mr. Ely: Your Honor, just a moment. That was in the nature of an objection. He said the police report shows so

and so. I object to what it shows. It speaks for itself. I further say if Mr. Levin wants the police report in evidence we will be glad to have it go in.

The Court: Objection sustained. The offer is up to Mr. Levin.

[fol. 129] By Mr. Levin:

Q. Can you give us the time when this incident occurred at Station A?

Mr. Ely: I object as repetition.

The Court: Yes, he testified.

By Mr. Levin:

Q. Can you give us the time when the service was restored?

A. Prior to nine o'clock in the morning.

Q. How long prior?

A. I don't know. I checked with the company when I come on duty in the morning to ascertain what incidents they may have we don't have, and at that time I was told of the incident down on Rutger street, and that it had now been put back in operation, so I would say prior to my call at nine o'clock.

Q. What time do you arrive on duty in the morning?

A. My regular time would be get to the office about quarter to nine; but quite often when I leave my home I check some of the details before I get to the office, which would put me working sometimes at 7:30 or 8:00 in the morning.

Q. Did you make inquiry the following morning whether the repairs had been completed?

A. Yes, it was completed, because that is when I went down to Rutger street to make my investigation and it was in operation.

The Court: Do you have some further examination?

Mr. Levin: Yes.

The Court: We will take the morning recess.

(10-minutes recess.)

By Mr. Levin:

Q. Lieutenant, getting back to the incident of the telemetric box at Manchester, isn't this correct: That the fire department on that occasion was called to open the box, and that they had no key, and they had a bolt cutter?

A. That's right.

Q. Isn't it also true that the striking employes of Laclede's emergency crew came there about the same time as the firemen, and the firemen asked the man to open the box?

A. The way I have been informed, the men from the union parked their car and left two men in the car. The two men [fol. 130] got out of the car and came across to the corner and identified themselves to the police officer there at the time and to deputy chief Olsen. The box was open at the time they got there. Olsen had used a bolt cutter.

Q. The fire department had used a bolt cutter and cut the lock?

A. Yes. When they identified themselves to Chief Olsen and told them they were striking ex-employes, they were an emergency crew sent out from the union and they were familiar with gas, he told them if they knew what they were doing for them to shut off the gas, as he was not familiar with the box.

Q. You were advised Chief Olsen asked them to shut it off, is that right?

A. Yes, that is correct.

Q. Isn't it true that on Manchester there is a considerable amount of traffic, very heavy trucks and buses, and also a lot of vibration from the railroads running alongside there?

Mr. Welborn: I object to that, calls for a conclusion.

Mr. Levin: I will withdraw it.

Q. You are familiar with that area of Manchester, are you not?

A. Yes.

Q. Is it a street that is heavily trafficked by large cargo trucks?

A. It is heavily traveled by all sorts of traffic.

Q. A great many large trucks that travel that street, are there not?

A. Trucks, buses, passenger cars.

Q. This stretch of Manchester is alongside of the Missouri Pacific and the Frisco Railroad tracks, too, is it not?

A. It is to the north of the tracks, yes.

Q. There is a lot of heavy industry in that area, too, is there not?

A. Yes.

Q. Isn't it true that there is a considerable amount of vibration in the street in that area from all these causes I have mentioned?

A. I would say there is a lot of vibration.

Q. And that connection that you refer to, or control, could have been removed or loosened by vibration, isn't that correct?

A. No, sir.

[fol. 131] Q. Why not?

A. Because the party that called the incident in was standing at the corner when the police officers came there, and he gave a description of what happened.

Q. Are you familiar with the controls in that telemetric box?

A. No. I have seen them, but I am not familiar with their operation.

Q. Do you know how it operates?

A. No, sir; only that it transmits by telephone wire the pressure to the office on Forest Park.

Q. You do know that is a relatively sensitive instrument, isn't that correct?

A. I would infer it is, yes.

Q. You personally don't know how that control was knocked out or loosened, do you?

A. Yes, sir, I think I do.

Q. Personally?

A. The only way we know things in the police department is from the report submitted by the officer at the scene.

Q. I asked if you personally know how that connection was loosened?

A. No, sir, I wasn't there when it was loosened.

Mr. Levin: That's all.

Redirect examination.

By Mr. Welborn:

Q. Do you have with you the police report of this incident?

A. I do (handing document to counsel).

Mr. Welborn: Identify that as Plaintiff's Exhibit 10.

(Said document was thereupon marked for identification as Plaintiff's Exhibit 10.)

Q. Officer, I will show you this document which has been marked Plaintiff's Exhibit 10 and ask you whether or not that is the report presently on file, or taken from the files of the St. Louis Police Department, which report was prepared in the usual course of the operation of the St. Louis Police Department (handing said document to the witness)?

A. Yes, sir.

[fol. 132] Q. Is that an original copy of the report, or duplicate copy?

A. This is a duplicator copy.

Q. By whom was that report prepared?

A. This report was made by Patrolman John Burke of the Second Police District.

Q. When you say duplicator copy would you explain what you mean?

A. These reports are typewritten using duplicator carbon, which produces a copy of the report on the back of the original. The original report then is sent to the Bureau of Records, where it is run through a machine and copies are printed from the original.

Q. Is this impression then made from the same impression as the typewriter on the original report?

A. This is made off of the original typewritten report.

Q. Is it made at the same time?

A. No, sir. These reports are made in the district. This particular district is located out on Hampton avenue. Then it is forwarded to police headquarters at Twelfth and Clark, in the Bureau of Records, where the original is run through this machine and copies distributed.

Q. By whom was that prepared?

A. By Patrolman John Burke of the Second District.

Q. Is he assigned to your squad?

A. No, he is a uniform officer assigned in the district.

Q. Is Officer Burke available for testimony, do you know?

A. Yes, he can be contacted through the department.

Q. Lieutenant, you testified that escaping gas which one smells in the air from gas mains is not dangerous; but are there occasions when escaping gas becomes dangerous because it cannot be smelled?

A. Yes, sir.

Q. Will you elaborate on that, please?

A. Escaping gas when it is in the free air is not considered dangerous, because there is so much air that you don't confine it to where you would have an explosive mixture. A broken gas main in the street, with escaping gas up into the street into the air, does not create any particular [fol. 133] hazard; but escaping gas through the ground entering into the basement of a building can create a hazard.

Q. In your experience as a police officer and a member of the arson and bombing squad have you had occasion to investigate explosion results?

A. Yes, I have.

Q. How many such explosions?

A. Three or four.

Q. Lieutenant, gas escaping through mains into a sewer is likewise dangerous, is that correct?

A. Yes, sir.

Mr. Welborn: I believe that is all, Lieutenant.

Recross examination.

By Mr. Levin:

Q. There have been no instances of any broken gas mains entering the basement that have not been repaired by the emergency crew, have there?

A. During this strike?

Q. Yes.

A. Not that I know of.

Q. There has been no explosion that you are aware of, has there, other than the one you testified to earlier?

A. That's right.

Q. Getting back to this Forest Park incident where you say a bottle of odorant or container of odorant was thrown

in—no one was placed under any charges on account of that incident, were they?

A. No, we have been unsuccessful so far.

Q. And you had a police detail right on the scene, did you not?

A. Yes.

Q. Isn't it true on that occasion that you and I discussed this matter, and I suggested that if there be any question about it all of the men would move their cars on the opposite side of Forest Park and park on the north side of the street, of that wide street; wasn't that what happened?

A. I don't think that was the result of your suggestions. I think you informed me the Captain in the district had made an order and you were willing to comply with it.

Q. And the men parked their cars on the north side of the street?

A. Yes.

[fol. 134] Q. What you called a stench bomb was some container of the odorant which is normally used by the company in its gas, is that correct?

A. It was a glass container.

Q. Containing the odorant the company normally uses in its gas, is that correct?

A. An odor similar to that, yes.

Q. You are not prepared to say what that odorant was?

A. I can only say what it appeared to me by smell.

Q. You have not received any complaints of any broken gas mains on the street emitting gas, or any fires therefrom, that have not been repaired, have you?

A. The Police Department has none.

Q. And you have heard of none in any other direction, have you?

A. No.

Mr. Levin: That's all, Lieutenant.

Mr. Welborn: I would like to recall Mr. Digiovanni.

The Court: Very well.

CHARLES L. DIGIOVANNI was thereupon recalled by Plaintiff:

Mr. Welborn: Would you identify these, please?

(Thereupon three documents were marked for identification as Plaintiff's Exhibits 11, 12 and 13, respectively.)

Mr. Welborn: It is stipulated and agreed that Mr. Digiovanni would testify that these reports which have been marked Plaintiff's Exhibits 11, 12 and 13 were prepared in the same manner as reports which have been marked as Plaintiff's Exhibits 6, 7, 8 and 9, and are the original records of the Laclede Gas Company, prepared in the usual course of business, and reserving the same objection on the part of the defendants that has previously been made to the matters contained on Plaintiff's Exhibits 6, 7, 8 and 9 relative to similar matter contained on Plaintiff's Exhibits 11, 12 and 13.

Mr. Levin: That neither Mr. Digiovanni nor the person who wrote that report had any knowledge concerning the [fol. 135] truthfulness or accuracy of anything contained on the report other than the fact that such a call had been received.

The Court: In view of the stipulation they may be received.

OFFERS IN EVIDENCE

Mr. Welborn: I will offer those in evidence—Plaintiff's Exhibits 11, 12 and 13.

Mr. Levin: Subject to the reservation I have made.

The Court: Very well, they will be received.

Said Plaintiff's Exhibits 11, 12 and 13, offered and admitted in evidence, are, respectively, in words and figures as follows:

(Here insert Plaintiff's Exhibits 11, 12 and 13.)

Mr. Welborn: If the Court please, for the purpose of the record, I will reoffer Plaintiff's Exhibits 1, 2, 4, 5, 6, 7, 8, 9, 11, 12 and 13 in evidence. I think I have offered those in evidence previously, but I am not certain, so, for the record, I will offer those exhibits in evidence. I withdraw and do not attempt to offer Exhibit 10 in evidence.

Mr. Ely: Exhibit 3 is a 34-page summary or report, and Exhibit 10 is a copy of the police report. We are not offering them.

Mr. Levin: It is not offered.

The Court: 1 and 2 are in evidence. 4 has not been offered and will be received.

Mr. Levin: Subject to the objections which are already stated I readopt, so there will be no waiver.

The Court: You have made no objection to that. That is the chart.

Mr. Levin: That's right.

The Court: Are you making any objection?

Mr. Levin: No. But as to the others Mr. Welborn just spoke of I reserve the objections I made earlier and restate them, without cluttering up the record, since I believe the Court had earlier admitted them all.

The Court: Yes, Exhibit 5 was admitted by agreement, [fol. 136] and the Court has already admitted 6, 7 and 8. 9 has already been admitted, and so have 11, 12 and 13.

Mr. Levin: That's right.

Said Plaintiff's Exhibit 4, offered and admitted in evidence, is in words and figures as follows:

(Here insert Plaintiff's Exhibit 4.)

Mr. Levin: May I ask if Mr. Welborn is in position to make copies of those exhibits available—all except the chart—in photostatic form, or whatever form you want to make them available?

Mr. Welborn: Duplicates prepared will be satisfactory?

Mr. Levin: Yes.

Mr. Welborn: With that, if the Court please, the plaintiff rests. I would like to ask permission of the Court to withdraw Plaintiff's Exhibits 6, 7, 8, 9, 11, 12 and 13, and substitute photostatic or duplicate copies in lieu of the originals.

Mr. Levin: No objection.

Plaintiff rests.

DEFENDANT'S EVIDENCE

JOSEPH APPELBAUM, being sworn, testified:

Direct examination.

By Mr. Levin:

Q. Please state your name.
A. Joseph Appelbaum.
Q. Where do you live, Mr. Appelbaum?
A. 2490 South Sheridan Boulevard, Denver, Colorado.
Q. What is your business or occupation?
A. I am a Vice-President of the Oil, Chemical and Atomic Workers International Union.
Q. How long have you been Vice-President of the Oil, [fol. 137] Chemical and Atomic Workers Union?
A. Since March 4, 1955.
Q. Is that organization an affiliate of the AFL-CIO?
A. Yes, sir.
Q. Where are its headquarters?
A. Denver, Colorado.
Q. Before assuming that position with the union did you have any other office or position with the union?
A. Yes.
Q. What union?
A. United Gas, Coke and Chemical Workers of America.
Q. What position did you hold in that organization?
A. I was a district director.
Q. What were your duties as district director?
A. Supervising our international representatives and carrying out other duties, and any other service to our local unions, negotiating contracts, organizational work and regular routine trade union duties.
Q. As a Vice-President of the organization did you file with the National Labor Relations Board a non-Communist affidavit as required by the provisions of the Labor Management Relations Act, 1947?
A. Yes, sir.
Q. Have all of the officers and representatives of your union filed such affidavits with the National Labor Relations Board?

A. Yes, sir.

Q. Is your union in compliance with the requirements of Sections 8, 9 and 10 of the National Labor Relations Act?

Mr. Ely: That would call for a conclusion of the witness, whether it is in compliance.

The Court: Sustained to the form.

By Mr. Levin:

Q. Have the officers of your union filed with the Bureau of Labor Standards United States Department of Labor the financial information required by that department under the provisions of the National Labor Relations Act and the Labor Management Act of 1947?

A. Yes, sir.

Q. What was the latest period for which such filing was [fol. 138] made?

A. I am not certain of the ending fiscal period, but it is the most current one, and we are in compliance.

Q. Have the other officers and representatives of your union filed the non-Communist affidavits set forth in the provisions of the National Labor Relations Act and the Labor Management Relations Act of 1947?

A. Yes.

Q. Have they all filed such affidavits?

A. Yes, sir.

Q. Has your union posted and published the financial information relating to its income, disbursements and dues, in accordance with the provisions of the Labor Management Relations Act of 1947?

A. Yes, sir.

Q. Has your union prepared and filed, as provided by the Labor Management Relations Act of 1947, a list of its officers and the term of their respective offices?

A. Yes, sir.

Q. Is your union currently recognized by the National Labor Relations Board and its regional directors for the processing of complaints and grievances under the Labor Management Relations Act of 1947?

A. Yes, sir.

Q. Prior to joining the Oil, Chemical and Atomic Work-

ers International Union, and your district directorship in United Gas, Coke and Chemical Workers, did you have any other position in a labor union or organization?

A. Yes.

Q. What was that?

A. I was a district director for the United Mine Workers of America, District 50, in St. Louis, Missouri.

Q. State to the Court the years that are covered by these various positions you have testified—first, the United Mine Workers, District 50.

A. With the United Mine Workers—these are approximate dates—from about 1936 to 1942. With the United Gas, Coke and Chemical Workers of America from 1942—I want to make a correction there. I was with the United Mine workers up until 1948, if my memory serves me right. And after that with United Gas, Coke and Chemical Workers until March 4, 1955, when that organization and the Oil Workers International Union merged and became the [fol. 139] Oil, Chemical and Atomic Workers International Union.

Q. There was a merger of the two organizations?

A. Yes, sir.

Q. Did you in any of those capacities have anything to do with the labor relations of the employes of Laclede Gas Company?

A. Yes, sir.

Q. Will you state when that began and what it consisted of?

A. I have been directly connected in my capacity with the unions I have mentioned and in my position working for those unions from the time we have practically organized—and more specifically from the years 1936 up until the last year and a half—worked and assisted these local unions; in the first instance in obtaining recogniton through federal government agencies—

Q. Before we get to that, were you an employe of Laclede Gas Company?

A. Yes, sir.

Q. During what years?

A. I originally went to work for Laclede Gas Company in 1927. I was laid off in 1932 due to lack of work, and I

was recalled—I don't know the exact date—it was a little over a year I was off of work due to lack of work—and I was recalled I believe it was in 1932.

Q. Did you work for the company continuously until you went into union activity?

A. Yes, sir.

Q. Are you now on leave of absence from Laclede Gas?

A. Yes.

Q. You have retained your seniority and other status with Laclede Gas until now, is that correct?

A. Yes, sir.

Q. That is pursuant to various contracts between the company and the union, is that correct?

A. That's right.

Q. Will you state to the Court how Local 6, United Gas, Coke and Chemical Workers of America, first got to be the bargaining agent for the employes of Laclede Gas?

A. That occurred in 1935, Mr. Levin. We had a strike at that time in which one of the principal issues was recogni- [fol. 140] tion of our union. As a result of that strike our union was recognized, and from that period on we have been negotiating contracts which were renewed from year to year.

Q. Did the union at that time have an election for bargaining representatives under the jurisdiction of the National Labor Relations Board?

A. At that specific time—the year 1935—are you talking about?

Q. Yes.

A. I don't recall an election in that year.

Q. Do you recall the first year when such an election, if any, was held?

A. I believe that was in 1946.

Q. Can you fix the incident, or the time, that puts that date in your mind?

A. Yes, sir. As a result of certain federal laws the company required that we have an election conducted by the National Labor Relations Board because of the fact our contract contained a union shop clause. The federal law provided, as I understand it, that before the parties could negotiate such a clause it was necessary that the workers

who are directly involved express their opinion, through this federal government agency, by a secret ballot election, if they desired their union to negotiate such a type clause.

Q. By whom was such a secret ballot election conducted?

A. It was conducted by the National Labor Relations Board.

Q. Under the provisons of the Labor Management Relations Act of 1947, is that correct?

A. Yes.

Q. To refresh your recollection, would not that election have been in 1947, following the passage of the Taft-Hartley Law?

The Witness: I didn't get your question.

Q. Would not that election have been in 1947, following the passage of the Taft-Hartley Law, which was adopted in the year 1947?

A. You say would it have occurred if there had been no law?

Q. Didn't it occur after the passage of Taft-Hartley?

A. Yes.

[fol. 141] Q. So it was subsequent to 1946?

A. That's correct; it had to be.

Q. Approximately how long after the adoption of Taft-Hartley was this election held?

A. I am not completely certain of the time on that, but it was after that, because we are governed by that law and we complied with its provisions.

Q. Did the company at that time insist that the union undergo such an election before so contracting?

A. It is my understanding, yes.

Q. I have been addressing my questions to you now with regard to Local 6 United Gas, Coke and Chemical Workers Union. Can you state to the Court what type of work or job classifications are encompassed within the membership of Local 6?

A. They are the maintenance and production workers of Laclede Gas Company.

Q. Are they the workers who are engaged in producing whatever gas the company produces, or in distributing whatever is distributed?

A. Yes, sir.

Q. Are they employes engaged in the repair of leaks, whether it be in the appliances or in the street or any equipment of the company?

A. Yes, sir.

Q. Does that include the so-called street crews engaged in the laying or repair of pipes?

A. Yes, sir.

Q. Does that include the meter repair shop and similar activities in the Forest Park operations?

A. It includes all of the work classifications in the Forest Park division, with the exception of certain particular jobs who in those jobs they are members of one of the other two organizations.

Q. It is a correct statement that the coverage of Local 6 encompasses all production and service employes of the company other than office and clerical and supervisory workers?

A. That's right, sir.

Q. Has Local 6 had a union shop with the company?

A. Yes, sir.

[fol. 142] Q. Since when has Local 6 had a union shop with the company?

A. It is difficult for me to remember the exact date that it was inserted in the contract by agreement between the parties, but it has been for quite a few years.

Q. And you say it was as a result of the continuation of the union shop that you had the Labor Board election and certification following the passage of the Labor Management Relations Act in 1947, is that correct?

A. That's right.

Q. After the merger of Gas, Coke and Chemical Workers International with the Oil, Chemical and Atomic International CIO was there some further Labor Board proceeding between Local 6 and Laclede Gas Company?

A. Yes, there was.

Q. To refresh your recollection, I show you Defendants' Exhibit B (handing document to the witness).

A. Yes, sir.

Q. Mr. Appelbaum, will you state to the Court what happened most recently with reference to the National Labor

Relations Board certification of your union as the collective bargaining agent for the employes formerly represented by Local 6?

A. As a result of the merger between our former union, the Gas, Coke and Chemical Workers, and the Oil Workers International Union—of course, it resulted in a new name being adopted—the Oil, Chemical and Atomic Workers International Union—and in order to be able to have our contracts in the proper name of the new union it was necessary to go to the National Labor Relations Board and to jointly ask them to amend our certification on the name of the union. That was done in respect to our union and the gas company, who jointly visited the National Labor Relations Board and sought that motion to amend our certification.

Q. On what date did that occur?

A. That was on the 27th day of September.

Q. What year?

A. Of 1955.

[fol 143] Q. Following that joint petition filed by your union and the company to amend the certification, in order to show the new name of the union following the merger, did the Labor Board issue an order granting your request?

A. Yes, sir.

Q. And there was an amended certification to what new name?

A. Oil, Chemical and Atomic Workers International Union AFL-CIO.

Q. Local what?

A. Local 8-6.

Q. In the meanwhile were there other proceedings affecting Local 6 resulting from Laclede's acquisition of the properties of the St. Louis County Gas Company in 1948?

A. Yes, sir.

Q. Will you tell the Court what happened on that occasion?

A. On that occasion, Mr. Levin, as a result of the purchase of the St. Louis County Gas Company by the Laclede Gas Company we had—Local 8-6 had—a union shop contract with the company—

Q. Let me interrupt. Isn't it true that at that time,

following the purchase by Laclede Gas Company of the St. Louis County Gas Company, there was a merger of County Gas into Laclede, and a dropping of the corporate structure of County Gas?

A. That is my understanding.

Q. Then what did you do?

A. As a result of that there was litigation because of two labor unions being involved and it resolved in the determination and a secret ballot election being conducted by the National Labor Relations Board.

Q. Who petitioned the National Labor Relations Board at that time to conduct an election and to make its certification?

A. If my memory serves me right, I believe that the gas company filed with the N. L. R. B.—and I believe our local union also did—requesting the Board to conduct this election.

Q. Did the Board at that time conduct an election to determine who would then represent the newly acquired employes who had formerly worked for the St. Louis [fol. 144] County Gas Company and were then newly employed by the Laclede Gas Company?

A. Yes, sir.

Q. Who won that election?

A. Local 8-6.

Q. It was then Local 6, was it not?

A. Yes.

Q. Did the National Labor Relations Board, following that election, issue its certification of representatives?

A. Yes, sir.

Q. Has any other labor organization or group at any time since 1936 other than United Gas, Coke and Chemical Workers Local No. 6, or its successor, the Oil, Chemical and Atomic Workers International Union Local 8-6, ever presumed or seek to represent the employes encompassed within the unit for which you have been certified?

A. Since what year did you say?

Q. Since you first began to bargain with Laclede in 1936. Let me rephrase it. Is it correct that Local 6 is the only union that has ever been certified by the National

Labor Relations Board for the employes within the unit it represents?

A. That is right.

Q. Has Local 8-6 and its predecessor had collective bargaining contracts in written form with Laclede ever since 1936?

A. That's right.

Q. I show you Defendants' Exhibit F, which purports to be a labor agreement between Laclede Gas Company and Local 8-6, effective July 1, 1955, which, it is stipulated, is the most recent current agreement between the company and the union (handing booklet to the witness)—I show you that exhibit and call your attention to Section 2 appearing on page 4 and to Section 6 appearing on the succeeding page—

The Court: Mr. Levin, I think this is a good place to break for lunch, since you are starting on a new inquiry.

At this point a recess was taken until 2:00 p.m., at which time the trial was resumed as follows:

By Mr. Levin:

Q. Mr. Appelbaum, before the noon recess I called your attention to Section 2 and Section 6 of Article I of Defen-[fol. 145] dants' Exhibit F appearing on pages 4 and 5 of the contract between Laclede Gas Company and Local No. 8-6—I will ask you whether those sections make reference to the provisions of the federal law (handing booklet to the witness)?

A. They do, sir.

Q. In connection with what subjects?

A. Section 2 "Union Membership" and Section 6 "Labor-Management Relations Act of 1947."

Q. Is it correct that Section 2 is what is known as the union shop clause of the contract?

A. Yes, sir.

Q. And that the company and the union have expressly conditioned the effectiveness of that upon compliance with the federal law, the Labor Relations Act of 1947?

A. That is correct.

Q. And Section 6 refers to the effect of a change of the

federal law, the Labor-Management Relations Act, and that thereupon the parties will negotiate, isn't that correct?

A. That is right.

Q. Have those or similar provisions appeared in all the collective bargaining contracts between Local 6 of United Gas, Coke and Chemical Workers of America and Laclede Gas Company since the passage of the Labor Management Relations Act, 1947?

A. Yes, sir.

Q. Prior to the passage of the Taft-Hartley Law in 1947 did the union have a union shop with the company?

A. It is my recollection that we did.

Q. I have asked you earlier about the certification of Local 8-6, Mr. Appelbaum. Can you tell the Court what is Local 194, of what is it comprised?

A. Local 8-194—dash 194—is comprised of the office and clerical workers of the Laclede Gas Company.

Q. Had it at any time in the past been known by a different name?

A. It had been known, prior to March 4, 1955, as Local 194 of the United Gas, Coke and Chemical Workers of America.

Q. How did Local 194 come to be the collective bargaining agent for the office and clerical workers at La-
[fol. 146] clede?

A. As a result of a petition being filed with the National Labor Relations Board, which held a secret ballot election at a subsequent date which resulted in the office and clerical workers voting for the union, and at a subsequent date, several days later, the National Labor Relations Board certified the office and clerical workers as a bargaining unit.

Q. Mr. Appelbaum, in September, 1955, was Local 194 recertified in similar fashion as was Local 8-6?

A. Yes, sir.

Q. How was that done?

A. That was done in the same identical manner as the motion to amend the certification occurred in the case of Local 8 dash 6, where proper presentation was made to the National Labor Relations Board by our union and the company to amend the certification in order to change the

name of the union as a result of the merger I have previously told the Court about.

Q. And was the Union Local 8-194 Oil, Chemical and Atomic Workers thereby certified by the National Labor Relations Board?

A. Yes.

Q. For the same group of employes for which Local 194 Coke, Gas and Chemical Workers had been certified, is that correct?

A. Yes.

Q. Did Local 194 execute a contract with Laclede?

A. Yes, sir.

Q. I show you Defendants' Exhibit H, and ask you if that is the most recent agreement between Laclede and 194 (handing booklet to the witness)?

A. That is, sir.

Q. When was that negotiated?

A. This was negotiated and became effective July 1, 1955.

Q. To be effective for a term ending when?

A. Ending June 30, 1956.

Q. Prior to the execution of Defendants' Exhibit H had there been prior collective bargaining contracts between Local 194 United Gas, Coke and Chemical Workers Union and Laclede Gas?

A. Yes, sir.

[fol. 147] Q. Had such contracts continued and been effective continuously ever since the certification in the National Labor Relations Board election?

A. Yes, sir.

Q. In all hese intervening years since the first certification and up to the present date was any other labor organization or union ever certified for the clerical and office workers so employed by Laclede Gas?

A. No, sir.

Q. Is it correct then that Local 194 has at all of those times since 1944 continued as the sole and exclusive bargaining agent?

A. That's right, sir.

Q. With respect to Local 109 United Gas, Coke and Chemical Workers of America, how did it come to be the collective bargaining agent for the employes it represents?

A. A proper petition was submitted to the National Labor Relations Board in 1946, if my memory serves me correctly, asking the National Labor Relations Board to conduct an election for the members who would come in the jurisdiction of Local 109.

Q. Was such an election held in due course?

A. Yes, sir.

Q. Under the auspices of the National Labor Relations Board?

A. Yes.

Q. Was any certification thereafter issued by the National Labor Relations Board?

A. Yes, sir.

Q. To whom?

A. To Local 109 at that time.

Q. Has Local 109 continued to represent all the people within its jurisdiction and within its unit from that date until the present time?

A. Yes.

Q. Has any other labor organization or group made claim to be the exclusive bargaining agent, or the bargaining agent, for any of these employes since that time?

A. No, sir.

Q. I show you Defendants' Exhibit G captioned "Labor Agreement Between Laclede Gas Company and Oil, Chemical and Atomic Workers Union, Local 8-109" (handing booklet to the witness)—is that the last and most recent contract between the parties?

A. That is, sir.

[fol. 148] Q. At what time was that executed and when was it effective?

A. It was executed July 1, 1955, to be effective for a period of one year ending June 30, 1956.

Q. Mr. Appelbaum, does the contract between the company and 194 also provide for a union shop, as does the contract with Local 8-6?

A. It does, sir.

Q. Does it provide for a check-off of union dues?

A. Yes, sir.

Q. Will you please address yourself to Sections 2 and 6 of Article 1 of that contract (handing booklet to the

witness), and state whether that, too, has reference to relevant provisions of the Labor-Management Relations Act?

A. It does, sir.

Q. Are they the same or similar to those provisions contained in Local 8-6?

A. Yes, sir.

Q. Calling attention to Defendants' Exhibit G, the contract with Local 8-109, does that provide for a union shop (handing booklet to the witness)?

A. It provides for a modified union shop.

Q. Mr. Appelbaum, does the contract between the company and Local 8-6 and the contract between the company and Local 8-194 contain any seniority clause?

A. It does, sir.

Q. Will you, by reference to page and number, point out where those seniority provisions occur—first from Local 8—(indicating).

A. In Local 8-194 the contract does provide seniority provisions under Article IV, which is titled "Seniority." It is covered in several sections which explain the seniority and its determination, seniority right and the privileges and the posting of seniority lists. In Article 5 it provides for bidding as the procedure for the filling of job vacancies as a result of the attainment of certain seniority rights.

Q. Without going into Article 5, is it correct that the operation of Article 5, "Bidding Procedure and Job Vacancies," is a consequence of the operation of Article 4?

A. Yes.

[fol. 149] Q. And only Article IV spells out the seniority?

A. Yes.

Q. Addressing yourself to Exhibit F, are there similar seniority rights to be found there?

A. Yes, sir.

Q. Without more, can you just read into the record, to lay a foundation for the next series of questions, the first three sentences that are to be found there under Article IV, Section 1, captioned "Seniority and its Determination"?

A. Do I understand you want me to read them verbatim?

Q. Yes.

A. (Reading) "Article IV, Seniority. Section 1. Seniority and Its Determination. There are two kinds of

seniority: departmental seniority and company seniority. The departmental seniority of any employee at any time is the length of such employee's continuous employment in the department in which he has his regular job. The company seniority of any employee at any time is the length of such employee's continuous employment by the Company in any capacity."

Q. You were reading from the contract with Local 8-6?

A. Yes.

Q. Are there any job privileges or prerogatives that are dependent upon seniority or length of service?

A. Yes, sir.

Q. Will you please turn to page 12, Article V, of Defendants' Exhibit F, captioned "Bidding Procedure and Job Vacancies." Can you state generally to the Court what that has reference to?

A. Yes, it has reference to a method of filling job vacancies through bidding procedure, and the bidding procedure and the filling of the vacancy is based on the length of service the employe would have. That is a general interpretation of it, sir.

Q. So that one's position on the seniority roster, whether departmental or companywise, affects his right to bid on jobs, is that correct?

A. Yes.

Q. Does the right to bid on jobs have a bearing on the wages of an employe?

A. Very definitely, yes.

Q. How does it have that effect?

[fol. 150] A. The seniority system itself and the bidding is an incentive, and when jobs do occur or a rate of pay that are higher than an employe may be receiving on his current job, he has that opportunity to advance and he bids for the job. If he has the most seniority, of course, he attains that job, and consequently has a higher rate of pay.

Q. Withdrawing a man's seniority rights would then have a definite effect to his disadvantage in his pay envelope, is that right?

A. Yes, sir. He would not be able to be a successful bidder if he had no seniority, or didn't have much seniority.

Q. Does your contract with Local 8-6 contain any provisions for sick leave?

A. It does.

Q. Turn to page 19 of Exhibit F.

A. I have it.

Q. Where are the sick leave provisions to be found in the contract, on what pages and what sections?

A. It is on page 19. It is under Section 2 of Article VI.

Q. Without trying to read this whole thing, can you tell the Court generally whether sick leave is based upon the length of service and the seniority of an employe?

A. It does, sir, and it operates in the following manner, without specifically reading each step in the seniority clause: depending upon an employe's seniority, also depending on the number of days he will be allowed for at full pay for sick leave. We have a scale in there where there is a maximum.

Q. Actually isn't this true, then, without all of this: Section 2 (a) of the sick leave provisions has eight subsections setting out eight different and varying benefits on sick leave, depending on lengths of service, beginning at two months and going up to twenty years or longer?

A. That is correct.

Q. So that the man's length of service has a definite effect upon his benefits and sick leave, is that correct?

A. Yes, sir.

Q. Does your contract contain any provisions relating to vacations?

A. Yes.

[fol. 151] STIPULATIONS

Mr. Ely: If the Court please, we haven't objected, and I have no objection to all this evidence going in, except I don't see the materiality of it. If it is material, I would like Mr. Levin to state why it is material to this lawsuit. We don't have any other objection at all.

The Court: I assume because there is seniority connected with the act.

Mr. Levin: That is so, and that has been threatened.

Mr. Ely: I don't know what vacations has to do with this lawsuit. We don't dispute the provision of the contract.

But what has that to do with whether the State is or is not entitled to an injunction?

Mr. Levin: The Court stated the reason for it—because the pleadings frame the issues, and under the act these very things are threatened.

The Court: I assume this is tied to seniority, too?

Mr. Levin: That's right.

The Court: That will be overruled.

Mr. Levin: Will you read the question to him.

Mr. Ely: To expedite matters, we will admit all the provisions of the contract are in force.

Mr. Levin: May it be stipulated by the parties that the seniority and length of service of an employe with the company measures the length of vacation and the choice of vacation schedule to which an employe is entitled, that the longer the period of seniority the longer the vacation, as set forth in the contract?

Mr. Ely: That's right.

Mr. Levin: And removal of such seniority of the employe has a disadvantageous economic effect upon the employe's vacations, the length thereof, the right thereto, and the duration?

Mr. Ely: Whatever the contract says, we stipulate. I am taking your word for it. If that is what it says, we will stipulate that is true.

Mr. Levin: May it be further stipulated that the contract contains a retirement plan, and that the benefits under [fol. 152] the retirement plan are bottomed in part upon the seniority and the duration of service of the employe with Laclede Gas Company—that the benefits are more liberal depending upon greater length of service with the company; more liberal as the service grows longer up to a certain maximum; that removal of or denial of seniority has an adverse financial effect on the employe's retirement benefits?

Mr. Ely: That may be stipulated.

Mr. Levin: May it be further stipulated that the same facts would be true with respect to Defendants' Exhibit H and Defendants' Exhibit G as concerns the employes represented by Local 194 and 109?

Mr. Ely: Yes.

Mr. Levin: If I have overlooked any particular clause that is based upon length of service, we will agree that would have the same disadvantageous effect?

Mr. Ely: Anything you might have overlooked may be considered in the record.

Mr. Levin: All right.

Q. Did you participate in the negotiations held between Locals 8-6, 8-109 and 8-194 with Laclede Gas Company?

A. Are you talking about the current negotiations?

Q. Yes.

A. I have participated in those negotiations. My first entrance into those meetings were the Friday prior to the termination of the contract.

By Mr. Ely:

Q. June 29th?

A. That would be June 29th, Mr. Ely.

By Mr. Levin:

Q. Did you participate in the negotiations that were held on the following day, June 30th?

A. Yes.

Q. Was the subject of those negotiations different in any respect from the subject of negotiations at any other time during contract negotiations between the company and the union?

A. In my opinion, no, I don't think they were. They were not. We were discussing the issue of collective bargaining, matters of wages, hours and working conditions. [fol. 153] Q. There has been some testimony about differences and disagreements over the subject of risers and the connection of them. Will you please turn to Defendants' Exhibit F and state to the Court, on page 45, Section 16 of Article VII—was that particular section, and the company's policies and operations under it, the issue in dispute?

A. That was one of the issues, yes, sir.

Q. And the riser controversy arose under and by virtue of Section 16, Article VII, is that right?

A. Yes, sir.

Q. How long has Article VII, Section 16, been in your contracts with the company, Mr. Appelbaum?

A. I believe it has been in the contract since 1947 or 1948.

Q. So that this is not a new provision at all, is it?

A. No.

Q. It has been carried over from contract to contract between the company and the union, is that right?

A. Yes.

Q. Is it a correct statement that this was one of the issues in dispute over which negotiations broke down?

A. That's right.

Q. What were some of the other issues over which negotiations broke down at that time?

A. Wages.

Q. Were you in agreement on the subject of wages?

A. No, sir.

Q. What else?

A. Vacations.

Q. Had the union been seeking a broader, more liberal plan?

A. That's correct.

Q. Had the company acceded to your request?

A. No, sir.

Q. Had there been a meeting of the minds on the subject?

A. No, sir.

Q. That was a matter in dispute?

A. Yes.

Q. Were vacations a new subject of your collective bargaining contracts, or how long had vacations been provided for?

A. Vacations were not a new subject for collective bargaining—they have been in the contracts in some form based on subsequent negotiations of each contract as far back as I can remember.

[fol. 154] Q. At least since World War II, is that right?

A. Yes.

Q. Had the company and you arrived at agreement on holidays?

A. We had not arrived at any agreement on the holiday

question at the time of termination of the strike—beginning of the strike.

Q. Had the subject of holidays been a matter of collective bargaining negotiations between Local 8-6 and the company?

A. Yes, sir.

Q. For how long have you had holidays in your collective bargaining contracts with the company?

A. For quite a number of years. I don't recollect the exact year we finally got a provision in there on holidays, but it has been for quite some time.

Q. In any event, at the time of the commencement of the strike you were in disagreement on that subject, is that right?

A. That's right.

Q. Were there other matters in disagreement between you when the strike began?

A. Yes, there was. There was the matter of the length of the contract.

Q. Is the duration of your contract a subject of negotiation and bargaining between the company and the union?

A. Yes, sir.

Q. Has it been the subject of negotiations on the signing of the contract in past years?

A. Yes, sir.

Q. You were not in agreement on that, is that right?

A. Yes.

Q. Will you state to the Court the nature of that particular disagreement, what was then the difference between the two of you at the time when the strike began?

A. Shortly before the termination of our agreements, which terminated on midnight on June 30th, the company injected for the first time—this was only a short time before midnight—a proposal for a two-year agreement. The term of contracts normally that had been executed between the gas workers union and the company in most part have been one-year agreements. It was the contention of the unions that the new agreements, if and when [fol. 155] executed, should be for a term of one year. The dispute was one year, the position of the union, versus two

years, the position advanced by the company—shortly before the contract expired.

Q. You were not then in accord on that issue?

A. No, sir.

Q. Were there other issues that were in dispute?

A. Yes, sir. At that time we were in dispute on the surgical benefits that are contained in the insurance plan, particularly the hospitalization plan, and the union had proposed a liberalization of the surgical benefits as they apply to particular and individual operations. The company said that they felt—

Q. They were not in agreement?

A. They were not in agreement.

Q. You were in disagreement at the time the strike began?

A. Yes.

Q. Had your prior contracts contained provisions for surgical benefits and group health and welfare policies?

A. Yes, they did.

Q. That is contained in Exhibits F and H, is that right?

A. Yes, they are referred to under Article IX.

Q. For how long had you and the company been negotiating on this as well as other subjects on collective bargaining?

A. For quite a few years. I can't recall the initial date of the inception of them, but it was quite a few years.

Q. Were there other differences between you at the time?

A. I have enumerated most of those questions—the question of wages, the question of vacations, the question of surgical benefits, the question of term of contract, the dispute over Section 16 of Article VII, and the holidays; and at that time, as far as the joint negotiations were concerned, I don't recall any other particular items. There may be, but those are the major ones.

Q. Mr. Appelbaum, on the riser question, for how long had the union men been making these riser connections [fol. 156] before June, 1956, when it was proposed to change it?

A. As far back as I can remember. I originally went to work for the Laclede Company in 1927, as I told the Court

while ago, with the short period I was off a little over a year.

Q. So, to your knowledge, the practice in dispute had been in effect for a period from at least 1927 and until June, 1956, when the company proposed to change it?

A. That's right.

Q. And it had already been in effect when you started working for the company twenty-nine years ago, is that correct?

A. Yes.

Q. That was one of the numerous issues in dispute when the strike began?

A. That's right.

Q. Had there been a strike vote conducted by the membership of the union at any time prior to June 30th?

A. Yes, sir.

Q. Did the membership itself vote to go on a strike?

A. They did, sir.

Q. Will you state to the Court on what date that occurred?

A. That was on June 25th.

Q. Of this year?

A. Yes.

Q. Where was that meeting held?

A. That was held at the International Union of Electrical Workers, AFL-CIO, at 6141 Etzel.

Q. Do you know the result of that poll on the question of going on strike?

A. I will try to recollect the figures for you. I think it was 1673 to strike and 43 or 48 not to strike, and that was by secret ballot. It is in my brief case there.

Q. You will be able, by reference to your brief case, to fill in the figures?

A. Yes.

Q. Would this refresh your recollection, that 1658 was the affirmative vote?

A. Yes.

Q. And 43 negative?

A. That's right.

Q. When did the strike begin?

A. On midnight July One.

[fol. 157] Q. That would be the end of the day, June 30, 1956?

A. Yes.

Q. Or the beginning of July 1, 1956, is that correct?

A. That's right.

Q. Has that strike ever been terminated by any action of the membership?

A. No, sir.

Q. Has the question of the strike, or the continuation thereof, been submitted to the whole membership?

A. We have had several meetings since this strike has been in progress, and the membership has told the committee to continue, and have given them their vote of confidence on two occasions at these meetings.

Q. Approximately how many of the membership were in attendance at these meetings?

A. Between eighteen hundred and two thousand I would judge.

Q. Those have been open meetings, where members of the press and the radio have been present also, is that correct?

A. Yes, sir.

Q. Has there been a dissent from the membership from the action originally taken in the meeting on June 25, 1956?

A. No, sir.

Q. Has the union since that time attempted to continue to bargain with Laclede Gas to reach agreement on the terms and conditions of their collective bargaining contract?

A. Yes, sir.

Q. Going back to the period before the strike began, were the services of the United States Conciliation and Mediation invoked?

A. They were.

Q. Do you recall approximately when?

A. Under the Labor-Management Relations Act we are required by that law to serve a 30-day notice to the Federal Mediation and Conciliation; and the local unions had to comply with that law and serve those notices. The specific

day the Federal Conciliators entered into the negotiations and the dispute, I am not aware of that date, because I didn't enter the negotiations—as I said before—until the [fol. 158] 29th of June, and their presence—they had been there already, so I don't know the exact day they came in.

Q. But it was before you entered the picture on June 29, 1956, is that correct?

A. Yes.

Q. Did you, on the 29th or 30th of June, 1956, participate in sessions with the Federal Mediation and Conciliation Service?

A. Yes, sir.

Q. Specifically with whom of that service?

A. Commissioners Arthur Hale and Monroe Sheehan.

Q. Were they the same conciliators who had been on the case before you came to St. Louis?

A. They had served in that same capacity prior to my arrival on the case.

Q. Have you and the representatives of the various local unions, since July 1, 1956, attempted to negotiate, with the aid and assistance of the United States Conciliation and Mediation Service?

A. Yes, sir.

Q. Do you have a calendar of the times that you have been with that service?

A. We have been with that service every day, with the exception of one Sunday I believe. No meeting could be arranged that day. We have been with them—

Q. That Sunday would have been just the past Sunday, or July 8th. Isn't it true that you made yourself available to them?

A. Yes.

Q. Why was no meeting held that day?

A. They were unable to arrange a session, so far as I know, with the company.

Q. But every other day, with the exception of July 8th, you have been in session at some time or other with the Conciliation and Mediation Service, is that correct?

A. Yes, sir.

Q. And officials of Laclede?

A. Not as much with the officials of Laclede as we were with the conciliators.

Q. Why not?

A. The Laclede Gas Company, I assume, can answer best for that.

Q. They just haven't been available, is that it?

Mr. Welborn: I object to that.

[fol. 159] The Court: Sustained to the form.

Mr. Levin: Withdraw it.

Q. You have at all times been available for bargaining and negotiating, is that correct?

A. Yes, sir.

Q. You were absent from the courtroom all yesterday afternoon—where were you then?

A. We were meeting with the conciliators in negotiations.

Q. Was that at the Federal Building?

A. At the Federal Building on Eighth and Olive.

Q. The old Custom House?

A. Yes.

Q. Did you have negotiation sessions at any time later in the day?

A. Yes, sir, we did.

Q. Are other negotiations proceeding currently?

A. Yes.

Q. Beginning when and where are those being conducted?

A. They met today at two o'clock. I assume that they are in session at this moment.

Q. Are the subjects and topics of the negotiations those that we have enumerated here, and that are embodied in past contracts between the company and the union?

A. Yes, sir.

Q. Wages, hours and working conditions, is that correct?

A. That's right.

Q. I show you Plaintiff's Exhibits 1, 2 and 5—a proclamation of the Governor of the State of Missouri, dated July 5, 1956; Executive Order No. 1, issued by the Governor on the same date; and Executive Order No. 2, issued by the Governor on the same date also (handing documents

to the witness)—have you seen those proclamations and executive orders before?

A. These were—I haven't seen them in this form, if that is what you mean.

Q. Did you see their counterparts—did you see the same thing in typewritten form?

A. Yes.

Q. Those are photostats?

A. Yes.

Q. Where?

A. At the union meeting.

Q. What date?

A. It was Saturday, July 5th, I believe.

Q. These are the proclamations served by the Lieuten-
[fol. 160] ant—wasn't that on Thursday evening?

A. That's right. I was thinking of the other.

Q. Were they served on you on July 5, 1956?

A. That is right.

Q. They were served simultaneously, is that correct?

A. Yes.

Q. Mr. Dan Rogers was present at the time of their service, was he not?

A. He was not present. When the papers were brought to us a state trooper, whose name I don't recall, Lieutenant Moran and Assistant Chief of Police Casey served the papers. And Assistant Chief of Police Casey advised us that Mr. Rogers was downstairs in front of the building or in the lobby, one of the two.

Q. That was at 3529 Franklin avenue?

A. Yes.

Q. In any event, Mr. Rogers was along with the gentlemen who served these papers, and they were all served simultaneously, is that correct?

A. That is correct.

Q. Did the members of Local 6, Local 194, cause you or the other officers of the union to convey any communication to Mr. Rogers?

A. Yes, sir.

Mr. Levin: Mark that Defendants' Exhibit J.

(Thereupon a document was marked for identification as Defendants' Exhibit J.)

Q. I show you Defendants' Exhibit J, Mr. Appelbaum (handing document to the witness). Is that the communication that was sent by individual members to Mr. Rogers?

A. Yes, sir.

Q. By whom were these signed, Mr. Appelbaum?

A. By the members of our union who were employed by the Laclede Gas Light Company.

Q. Those were individually signed by each member?

A. Yes, sir.

Q. Do you know or have you been told whether Mr. Rogers has responded or given an answer to any of those communications and inquiries identified as Unions' Ex- [fol. 161] hibit J?

A. I know of no answer that has been received or reported to me.

Q. On what date were these posted and addressed to Mr. Rogers?

A. It was shortly after the State seizure.

Q. Was it the evening of July 5th?

A. I believe it was.

Q. Do you know where those communications were mailed to Mr. Rogers?

A. They were mailed to Mr. Rogers at 1017 Olive street.

Q. They were addressed to him and mailed to him at that address?

A. Yes.

Q. But where were they deposited in the mail and posted?

A. At the post office downtown.

Q. At the Eighteenth Street Main Post Office in downtown St. Louis?

A. That's right.

Q. When was that posting done?

A. That same evening.

Q. On Thursday, July 5th, in the evening, is that correct?

A. I think so.

Q. How many of these, approximately, went to Mr. Rogers, Mr. Appelbaum?

A. It is my recollection somewhere around a thousand—somewhere in that neighborhood. Maybe more.

Q. These were individually signed by each member—whoever signed it?

A. That's right.

Mr. Levin: That's all.

Mr. Ely: Do you want to have a break at this time, your Honor?

The Court: I think you can finish with him perhaps.

Cross examination.

By Mr. Ely:

Q. Mr. Appelbaum, you have testified that you and all the officers of the unions involved here filed a non-Communist affidavit with the Labor Board, as required by law?

A. Yes.

Q. When was that filed? When was yours filed? I don't care about the others.

A. That is normally filed, Mr. Ely, at the end of our fiscal year, and it has been—our International Union at-[fol. 162] torney handles that and brings the papers to us and we sign it, and, of course, he forwards it in. It is difficult for me to recollect the exact date I had signed it, but we definitely have signed it.

Q. Am I right in assuming that you are not and never have been a member of the Communist party, and are not and never have been in any way connected with it?

A. I should say not.

Q. I am right, am I, in assuming that?

A. That's right.

Q. By my question I didn't mean to infer that you were. I don't know you and I want to be sure. You have never been connected with the party in any way?

A. No, sir. I wonder why you even ask the question.

Q. It is cross-examination of matters to which you have testified.

A. Excuse me, sir.

Q. I don't know whether or not you profess personal knowledge of some of the matters to which you testified.

You have testified, I believe, that there was a meeting of the unions here involved on the 25th day of June. Were you in St. Louis at that time?

A. No, sir, I was not, but if you wish me to—

Q. That's all right. I want to be sure that you know it was taken.

A. Yes, I am sure of that.

Mr. Levin: You want to explain it?

The Witness: I wasn't there at the meeting. I was in my office in Denver, Colorado. However, our procedure is, under the rules of our union, that if a strike is contemplated the district director is required, sir, to send a communication in, advising of the situation, and also advising of the specific vote, and also relative information. That is done for several reasons. We have a defense fund arrangement in our International constitution, and it is necessary in all strikes, under our constitution, that they receive authorization before they can occur. And that is the reason I had specific knowledge of that vote and the meeting.

By Mr. Ely:

Q. That information was given to you in your capacity [fol. 163] as vice-president—or president?

A. I am the vice-president, sir.

Q. And this information came to you in your regular course of business, and was required by your International, is that correct?

A. Yes.

Q. So you speak authoritatively when you say it was taken on the 25th of June, and you were advised of the number of aye votes and the number of no votes—1658 to strike and 43 voted not to strike?

A. Yes.

Q. That was official information that came to you in your capacity as vice-president, is that correct?

A. Yes.

Q. On the 25th of June it was voted to strike at midnight on the 30th of June?

A. At the end of the contract, yes.

Q. You testified concerning the invocation of the services of the United States Mediation and Conciliation Service at least thirty days before the strike began. Now what do you know about that, about the notice given to the Federal Conciliators and Mediators thirty days prior?

A. I have been advised that our local union had complied with that.

Q. So there is no dispute about it, and you were so advised in your official capacity as a representative of the union, is that right?

A. Yes.

Q. Did you receive that information at least thirty days before the strike began?

A. No, I can't say that I received it. They are not required under the law to send me that. The requirement is to send that to the Conciliation Service.

Q. Did you have anything to do with the calling of the meeting of June 25th?

A. Did I have anything to do with it?

Q. Yes.

A. No, sir, I did not.

Q. Do you know by whom that meeting was called?

A. I can tell you the normal procedure.

Q. All right.

A. It is normally called by the officers of the local union, the executive boards, and counsel, on advice from the International representative working with them.

[fol. 164] Q. Then there was an International representative here working with them?

A. There was an International representative assigned.

Q. Who was that, please?

A. William Wynn.

Q. Do you know when Mr. Wynn came here, or is he stationed here?

A. He is stationed here.

Q. He is here all the time?

A. Yes.

Q. This Plaintiff's Exhibit 1, the proclamation of Governor Donnelly, you say that was served on you on July 5th, is that right (handing document to the witness), by a state trooper, and Lieutenant Moran was along?

A. I believe so.

Q. At the same time that proclamation, or a copy of it—was that a signed copy, incidentally, served on you, signed by the Governor?

A. I assume it was.

Q. At the same time that proclamation was served on you—

Mr. Levin: We can stipulate these were properly signed, with the great seal of the State of Missouri, duly certified to by Walter H. Toberman, Secretary of State. There is no question raised about their authenticity whatsoever.

By Mr. Ely:

Q. At the same time the proclamation was served on you Executive Orders Nos. 1 and 2 were also served on you, is that right?

A. Yes.

Q. About what time of the day of July 5th was that proclamation and those orders served?

A. Some time in the afternoon.

Q. Around four o'clock or so?

A. I am not sure.

Q. It was late afternoon, was it?

A. It was in the afternoon.

Q. On the same afternoon you say approximately a thousand copies of Defendants' Exhibit J—that is the letter to Mr. Rogers—each one signed by a different member of the union—were mailed to Mr. Rogers?

A. That's right.

Q. How long after the service of the proclamation and the orders were those one thousand documents mailed?

A. Some time late in the evening.

[fol. 165] Q. A matter of hours after it was received?

A. Yes, a number of hours.

Q. Do you know where this document which has been identified as Exhibit J was prepared and who prepared it?

A. Yes, I am very happy to tell you that.

Q. All right.

A. These were mimeographed in our office.

Q. Who wrote it?

A. If you will let me explain, sir.

Q. All right; glad to have you.

A. We prepared that letter because of inquiries being made by our members as to what their particular status was in respect to employment—whether they would be employed by the State or the Laclede Gas Company, in event of seizure. Questions were raised at our meeting. We prepared these and brought them to the meeting because of their inquiries, and it was read at the meeting and our members were advised if they want to sign them they were available there in the hall and they could sign them if they desire—if they wanted answers to those particular questions.

Q. They are all identical, the thousand copies?

A. Whatever the number was, yes.

Mr. Levin: About fifteen hundred.

By Mr. Ely:

Q. When you say "we" prepared them, whom do you mean by that "we"?

A. Who wrote them?

Q. What person?

A. Our attorney worked with us on this, because these were matters of legal questions I certainly as a layman couldn't answer, and, naturally, with the questions being raised by our members, it was necessary to discuss this with our attorney.

Q. Yes. All I am trying to find out is who wrote it.

A. Our attorneys—Mr. Levin.

Q. Did you answer or respond in any way to the Governor's proclamation, or the Executive Orders 1 and 2, served on you?

A. Respond in what way?

Q. In any way?

A. We have continued our negotiations with the gas company under federal mediation.

Q. Yes, and also continued the strike, is that right?

A. That's right.

[fol. 166] Q. In other words, did you ignore the executive

order of the Governor saying he was seizing the company and taking possession of the plant?

Mr. Levin: If the Court please, I respectfully submit the question has been answered; repetitious; and asks the witness for a conclusion.

Mr. Ely: It has not been answered.

Mr. Levin: The answer was "We continued to negotiate and continued our strike."

The Court: Sustained to the form in the use of the word "ignore."

By Mr. Ely:

Q. Did you, Mr. Appelbaum, make any announcemen or any statement to the members of the union assembled at any meeting with reference to whether or not the employees should or should not, or would or wouldn't return to work after the issuance of this proclamation by the Governor and executive order?

A. We had our membership meetings for the local unions involved, to make our reports on progress, and we did make those reports.

Q. Make what?

A. On the progress of our negotiations.

Q. You must have misunderstood my question. Did you, Mr. Appelbaum, make any statement to any assembly of the members of any of these unions—or all of them—concerning whether or not they should or should not return to work after the service of the Governor's proclamation and executive orders on you?

A. I thought my answer would suffice. I will try to answer it this way; that we continued our negotiations under Federal Mediation and Conciliation Service, and reported those results to our membership, because we felt our activities were being conducted in a legal manner, under federal law.

Q. I understand that, but did you tell the employes not to return to work?

A. I have made my reports to the membership, as I have stated to you, and my reports have been confined to the work being done by the negotiating committee.

Q. I am trying to make myself clear. Did you tell or [fol. 167] advise the strikers not to return to work after this proclamation and after the executive order was served on you? You can answer that, can't you, yes or no?

A. I understand what you mean very clearly. The only thing I am trying to tell you the subject didn't come up.

Q. Are you correctly quoted in the St. Louis Post-Dispatch of July 6th as stating that the employes would not work because the union regards the King-Thompson Act as unconstitutional?

A. Mr. Ely, if you will just bear with me one second—

Q. If you answer the question I will bear with you.

A. This bears on the question.

Q. Yes, sir.

A. We have been misquoted so much by the daily press it is not even funny.

Q. I don't think there is anything funny about it. I asked you whether or not you were quoted or misquoted, correctly quoted or misquoted, by the Post-Dispatch of July 6th, the day after the proclamation was served on you, when the Post-Dispatch reported you as saying that the employes would not work because the union regarded the King-Thompson Act as being unconstitutional? Is that a correct quotation, or a misquotation, that one? That's all I am talking about.

A. The gas workers' union and the Laclede Gas Company are in a contract dispute over wages, hours and working conditions, and we are on strike because of no agreement on those conditions, sir.

Q. Yes.

A. I cannot help what the newspaper has printed or quoted. As I said before, sir, they have misquoted and misquoted this situation.

Q. Well, of course, I am asking about one particular report of the newspaper—that the reason you wouldn't go back to work, the union members wouldn't go back to work, was because you regarded the King-Thompson Act as unconstitutional—did you say that?

A. Mr. Ely, I personally have condemned the King-Thompson Law. We are in a legitimate contract dispute [fol. 168] with the Laclede Gas Company, and we are not

in agreement with them on wages, hours and working conditions, and we are on strike. If you want me to testify to this Court as to my feelings on the King-Thompson Law, I have just expressed them.

Q. All I have asked you is whether the strike has continued and the refusal to go back to work has continued because the union regards the King-Thompson Act, or because you regard the King-Thompson Act as unconstitutional?

A. I think I can answer that in this way: If the good Lord was with us this afternoon and we could reach an agreement with the gas company this afternoon work would resume tomorrow morning. I am sincere in that.

Q. Maybe you think that answers the question—I don't. Have you stated to any newspaper at any time that the King-Thompson Act is in your opinion unconstitutional?

A. Have I stated that?

Q. Yes.

A. Yes, I think I have.

Q. In connection with such statement have you made a statement you wouldn't return to work, or the union members wouldn't return to work, because you regard the King-Thompson Act as unconstitutional?

A. I don't recall making that particular statement. I told you before, we were in a contract dispute, and if we were to arrive at a settlement this afternoon—and I sincerely hope we do—we would go back to work tomorrow.

Q. I am sure of that—you would go back to work if you could get everything—I don't care about that particularly.

The Court: While you are stopped we will take the afternoon recess.

(10-minute recess.)

Mr. Levin: Your Honor, please, by leave of Court, if it is agreeable—and Mr. Ely has indicated his agreement to it—we have under subpena duces tecum someone from the news department of KSD-TV. They came at a time when we thought we would be ready for them. I wonder [fol. 169] if we can interrupt Mr. Ely's examination about fifteen minutes.

The Court: It is all right if it is all right with you.

Mr. Ely: We have no objection if you want to withdraw him at this time. We are not through with the cross-examination.

Mr. Levin: No, no. May it be stipulated and agreed that at 11:00 p.m. on Thursday, July 5, 1956, in the City of St. Louis, in the news room of KSD-TV, which is located in the Post-Dispatch Building, 1111 Olive Street, St. Louis, Missouri, Daniel C. Rogers, Chairman of the State Mediation Board, appeared on television, and later was re-broadcast on KSD radio station, and that he was interrogated there by Robert Hille, the announcer for KSD-TV. That an exact transcription was made of certain questions and answers propounded to Mr. Rogers, the questions being those contained in Defendants' Exhibit J, and that an exact transcription was made of the seven questions and the complete answers to those seven questions there given by Mr. Rogers?

Mr. Ely: It may be so stipulated, with this condition: Mr. Rogers just advised me in the courtroom just now that he appeared there at the request of KSD-TV; that about thirty minutes before the appearance that he had not received a copy of the letter or the questions at the time he made the answers. Of course, we will not stipulate that anything Mr. Rogers said which might be a conclusion of his would be binding on us or on the court or on anybody else. We admit merely that he did make the statements. We do not by so admitting waive any objection to the competency of anything.

Mr. Levin: I understand that perfectly.

TRANSCRIPTION OF KSD-TV BROADCAST OF INTERVIEW WITH DANIEL C. ROGERS, JULY 5, 1956

Said electrical transcription, offered and admitted in evidence, is in words and figures as follows:

"I haven't received the letter yet, but I will be glad to have you read it and I shall answer the questions now—"

[fol. 170] Mr. Ely: Your Honor, it is evident, from the starting of this record, that this is not the entire broadcast, because here Mr. Rogers is evidently speaking—he says:

"I haven't received the letter yet, but I will be glad to have you read it and I shall answer the questions now, Mr. Hille." So this record starts some time after the program started.

Mr. Levin: That's right. And may the record show the first voice heard is that of Mr. Rogers, in answer to a question that Mr. Hille asked him which is not contained on the record? That's correct.

The Court: All right.

Record resumed as follows:

"I haven't received the letter yet, but I will be glad to have you read it and I shall answer the questions now, Mr. Hille."

"All right. The first is:

'During seizure of the Laclede Gas Properties are you my employer and am I working as an employee of and for the State of Missouri?'

"The 2200 striking employees of the Laclede Gas Company are working for the Laclede Gas Company. They are not employees of the State of Missouri."

"The second question is similar: 'If I am not to be employed by you or the State of Missouri, who is the employer to whom I am ordered to report to work?'"

"They report to work, when they wish to, to the Laclede Gas Company."

"Third question: 'If I am to be an employee of you or the State of Missouri, what statutory authority have you for hiring me and what will be my rate of pay? Has the legislature made any appropriation or provision for the payment of my wages and the fringe benefits I am entitled to? If not, how am I going to get my money, and what assurance do I have that I will? If the answer to the earlier parts of the question is in the affirmative, [fol. 171] please give me a specific reference or citation to the authority or appropriation.'"

"The employees, as I have said, are still employees of the Laclede Gas Company, notwithstanding the fact that the company is under seizure, and all of the wage rates and benefits that they have heretofore enjoyed as em-

ployees of the Laclede Gas Company they will enjoy even during seizure if they return to work."

"Fourth question: 'If I am your employee or the employee of the State of Missouri, how am I to be protected in the event of industrial injury or occupational disease, and how will I retain the benefit of my normal coverage under the Missouri Workmen's Compensation Law? How can you retain for me my normal coverage and protection under the Missouri Unemployment Act and how can I continue to be fully covered under the Social Security Act?'"

"Since the employees remain the employees of the Laclede Gas Company, why, of course, the State has no responsibility for those things mentioned in there, and the Laclede Gas Company is responsible to its employees for all of these benefits just as it has in years heretofore."

"The fifth question: 'If I am not to be your employee or employed by the State of Missouri, who will my employer be?'"

"The Laclede Gas Company."

"The sixth question: 'If my employer is to be the Laclede Gas Company or any other private corporation or group, what authority have you to order me to work for a private employer engaged in a business for its own profit?'"

"It isn't a question of me or even the State ordering the employees of the Laclede Gas Company back to work. The point that the employees and the people need to know is that the Laclede Gas Company has been seized by the State of Missouri under its police power. Now, [fol. 172] under the police power the theory of the legislature is that if the public interest becomes jeopardized by a strike in a public utility and there is a threatened breakdown or actual breakdown of utility service that the legislature then has the right under its police power to step in and require the employees to continue to render services to the Laclede, so that the Laclede Company can itself render the services to the public which it is obliged to do. If I would explain that just a little bit further, the Laclede Gas Company is a public utility. It is required under the law to render safe and continuous service. It has a fran-

chise and a certificate of convenience and necessity from the State of Missouri, both of which obligate it to render safe and continuous service. Obviously, the Laclede Gas Company cannot render its public utility services to the people of the greater St. Louis area without its 2200 employees. Therefore, the obligation and the responsibility falls on the employees to stay at their jobs to enable the company to render this service, as much as it does on the company to render it, because, as I have already said, the company can't render its public service to the public without its employees.

"Now, the question is how can I, as it were, or how can the State of Missouri, do this to me? Maybe that is the way that question is. The point is this, that no one—no group of people—have a right to act concertedly to stop the services of a public utility. It is not a case of the State interfering with the individual right of an employee to quit his job when he sees fit. This is a concerted action by 2200 employees, and this concerted action adds up to a threat of disaster to the people of greater St. Louis, and under the police power the law, presumably, has the authority to make it unlawful for the employees who concertedly and willfully vote to throw the people of this greater St. Louis area out of the services of the Laclede Gas Company."

[fol. 173] "Mr. Rogers, the seventh and last question in this letter from these more than one thousand employees to you is similar to that and perhaps goes a little further. Let us see if it requires any further detail: 'If my employer is to be Laclede Gas Company or any other private corporation or group, how can you presume to legally deprive me of my right to refrain from working or join with other employees in mutual protection of our rights in light of the decisions made by the courts in Amalgamated Association versus Wisconsin Employment Relations Board, decided by the United States Supreme Court, or that of our Missouri Supreme Court in Rider versus Julian, which says your seizure is a mere token, and I would still be working for the Laclede Gas Company?'

"There is a great deal of misunderstanding about these cases and what they mean. In the first place, the Wisconsin

case was decided by the Supreme Court of the United States in 1951. Wisconsin had a law that provided for compulsory arbitration between the utilities of Wisconsin and the employees when they would reach an impasse in negotiations such as are in progress with the Laclede Gas Company and its employees now. The Missouri law contains no compulsory provision whatsoever, and therefore, under the Missouri law, the King-Thompson Act does not interfere with the Federal Mediation and Conciliation Service, nor the National Labor Relations Board, because we are not undertaking to compel a settlement of the dispute through arbitration. As a matter of fact, I have not sat in on any of the proceedings at all considering the settlement of it by conciliation and mediation, and certainly there is no authority on my part to undertake to compel arbitration of the suit. So the Missouri law is wholly different from the Wisconsin. The case of the Supreme Court of Missouri decided, the one you just referred to, Julian versus Rider, or Rider versus Julian, whichever way it [fol. 174] was, the Supreme Court in that case was discussing the King-Thompson Act, and it is true that, in effect, the Supreme Court did say that seizure under the King-Thompson Act is token seizure. Now it means this, that the police hand of the State of Missouri has the authority to lay itself on the property of the Laclede Gas Company and say that after the Governor issues his proclamation and orders seizure and appoints his agent that this property must be available for operation, and that is the token seizure they talk about. I don't run the company or give the people any orders or anything of the kind. They are not working for me. I am merely the agent of the State here representing the Governor to observe and see to it that the property of the Laclede Gas Company is available for operation. The employees, of course, are supposed to operate the property under directions of the Laclede Gas Company itself."

"Sir, is there any further action to be taken if the employees decide to continue the strike now the seizure is completed?"

"I am always unwilling to engage in any statements that anyone would justifiably think of as threats, but, after

all, you have asked the question, and many people want to know the answer to the question. Now, the point is this: As of four o'clock to-day Central Standard Time, five o'clock your time, the proclamation and executive orders went into effect, and from that time on the employees are in violation of the law which provides that it shall be unlawful if, after seizure, they engage in a strike. So they are in violation of the law as of this time. Now then, we like to be kind and considerate in the enforcement of an act, but the answer to the question is this: The employees, when the time arrives of a showing of resistance to the law, forfeit their seniority."

Mr. Levin: Your Honor please, may the record show that Station KSD-TV and the Pulitzer Publishing Com-[fol. 175] pany have fully complied with the requirements of the subpena duces tecum and they are excused from further service in the matter?

The Court: Yes. You gentlemen may leave with your equipment as quietly as possible.

Joseph Appelbaum, testified further on cross-examination:

By Mr. Ely:

Q. Mr. Appelbaum, on July 2nd, which was a week ago last Monday, did you, at the request of Mr. Daniel C. Rogers, attend a meeting at the Jefferson Hotel, at which meeting you and Mr. Wynn and Mr. Bickel appeared for the union, and Mr. Ramsey and three other gentlemen appeared for Laclede?

A. Yes, I attended that meeting.

Q. That was three days before the proclamation by the Governor?

A. Yes.

Q. Did you state at that meeting that the calling of the meeting itself by Mr. Rogers was an interference and an intrusion on union rights?

A. I did.

Q. And did you state at that meeting that the King-

Thompson Act was unconstitutional, and that the unions were negotiating with certain federal authorities?

A. I stated at that meeting in my opinion the King-Thompson Act was unconstitutional and that we were negotiating with—that negotiations were continuing with Federal Mediation and Conciliation.

Q. You have stated, before the brief recess of the court while ago, that the newspapers had misquoted you—the press misquoted you in several instances?

A. They have, yes, sir.

Q. Can you tell us of any instance in which you have been misquoted—what have the papers reported you as saying that you didn't say?

A. Can you show me the specific papers there?

Q. I have several of them here—but you said they mis- [fol. 176] quoted you. In what way have you been misquoted by any paper, and what paper quoted you as saying what you did not say?

A. Can I see the newspapers, and I can tell you? I can't from memory.

Q. I have a few of them here. Here is page 1 of the final edition of the St. Louis Post-Dispatch dated June 30th, wherein the paper purports to quote you, under the sub-heading line "Union Statement." Will you read that and see if you have been misquoted in any respect in that article (handing paper to the witness)? I think I have marked the quotation with ink alongside of the column.

A. Yes, that statement appears to me to be correct in the St. Louis Post.

Q. I would like to read it then, so we may have it in the record. There is quite a bit of the article that I don't care for, in order that we might not incumber the record with a lot of unnecessary reading. I will start reading part of this article which says: "As representatives of the AFL-CIO Oil, Chemical and Atomic Workers Union met with company officials today in a final effort to settle the dispute and avert the strike of about 2200 employes, scheduled to start at midnight, Joseph Appelbaum, a vice president of the international union, issued the following statement: 'The unions have rejected the company's offer

simply because it is entirely inadequate. There are a number of major issues in dispute, among which is the point on wages. The company has deliberately stalemated these negotiations by injecting at the very last moment issues that would tend to destroy some of our contract features that have been in our agreements for a number of years. The company is deliberately provoking and imposing on the gas consumers in St. Louis and the public in general this coming strike. With the attitude being displayed by the company, there is little hope for settlement of the disputed issues today. The union is preparing for a long strike.'"

[fol. 177] There the quotation mark ends and the article continues with other quotations in it. Under another subheadline immediately following: "Emergency Calls. Telephone numbers will be made public on which calls for emergency service can be received at union headquarters, Appelbaum said. In the meantime calls can be made to Franklin 1-0277, the union's permanent number, he added.

"Asked about the King-Thompson law, which is designed to prevent or halt strikes in public utilities, Appelbaum said the union had always considered the law unconstitutional.

"'We believe it violates our right of collective bargaining and our right of free speech,' he said. 'We are going to exercise our rights, guaranteed to us by federal law, of withholding our hire if we are unable to get an agreement with the company, and I am very pessimistic over the likelihood of it today.'"

I think that is the end of the quoted part. You say you are reported essentially correct?

A. Yes, it is.

Q. What did you mean when you said, with reference to the King-Thompson Act, "We believe it violates our right of collective bargaining and our right of free speech. We are going to exercise our rights, guaranteed to us by federal law, of withholding our hire if we are unable to get an agreement with the company"?

A. In respect to that particular statement, Mr. Ely, I do feel that the King-Thompson Law does impede collective bargaining, it does impede our freedom of speech, by the very fact that there are compelling factors within the law

that imposes certain penalties, and it is used as a club over the unions' heads—utility workers—in the course of negotiations. I do not think that they have the full freedom of collective bargaining under that type of law as compared to workers in other industries who are not subjected to penalties of the nature that are contained in this particular law.

[fol. 178] Q. In the King-Thompson law?

A. Yes.

Q. And what did you mean when you said there, "We are going to exercise our right of withholding our hire if we are unable to get an agreement with the company"? Did you mean you were not going back to work.

A. This is in effect what it means. And what I meant by that statement is under the constitution—under other federal laws the workers have a right to act in concert over questions of wages, hours and working conditions, if bargaining should cease.

Q. I will show you a 3-star final St. Louis Post-Dispatch for Monday, July 2, 1956—I have marked here several different things with ink I will just call attention to when that refers to you. Is this a correct statement in the first column article with reference to Joseph Appelbaum (indicating)—I will put a "1" there—with reference to the calling of a meeting?

A. That is substantially correct.

Q. Let's take the next marked part—marked "2"—and that is continued on another page (indicating)—is that a correct statement by the paper there of July 2nd?

A. Well, this is not a quote down here. This is something else.

Q. It is continued on page 6.

A. No, it is page 8, column 2.

Q. That's right.

A. That's not a quote. That is quoting the law.

Q. We will mark this off then at the end of the quote. Let's see if there is anything more. You and I have read this together out of the 3-star final edition of the Post-Dispatch dated July 2nd, which I will ask you if this is essentially correct: "A meeting of negotiating committees also has been called by Rogers for 10 a. m. tomorrow at

Sheraton-Jefferson Hotel. The announcement called for 'prompt action in the public interest.'" That is quoted.

"Joseph Appelbaum, international vice president of the AFL-CIO, Oil, Chemical & Atomic Workers, said the union [fol. 179] executive committee, which is bitterly opposed to state intervention, would decide whether to send representatives to the session called by Rogers." So far that is correct?

A. Yes, that is right.

Q. Then I drop down to the fifth paragraph after that in the same article. "Referring to possible state seizure of the gas company, Appelbaum declared: 'We do not intend to use any facility that is discriminatory in its makeup and which denies the right of free collective bargaining.' Describing the King-Thompson Act as 'the tool of the utility companies,' Appelbaum said the union position is that gas workers come within the scope of federal jurisdiction 'and the Federal Conciliation Service is competent to handle the matter.'"

The Witness: That is the statement.

Q. Then where it quotes you as saying "We do not intend to use any facility that is discriminatory in its makeup and which denies the right of free collective bargaining." Is that referring to the King-Thompson Act?

A. Mr. Ely, I have been, in all my years of service as a union representative, following out the instructions of the membership, and the instructions of the membership was to continue our negotiations as we had been doing. That is what that statement means.

Q. I have no objection to letting your answer stand, but I don't think you quite get the meaning of my question. With reference to the word "facility" what did you mean when you said "We do not intend to use any facility that is discriminatory in its makeup and which denies the right of free collective bargaining." What were you referring to as "facility"?

A. I think my previous answer covered the question.

Q. No, it did not.

A. If I can try to expound it a little maybe it will satisfy you.

Q. All right.

A. Our membership has instructed us to carry on negotiations as we were with Federal Mediation and Conciliation Service.

[fol. 180] Q. Yes.

A. Which means, in effect, Mr. Ely, that they were satisfied to carry on under the auspices of the federal laws and federal mediation, and not the King-Thompson Law.

Q. Then you meant by that you didn't intend to use the King-Thompson Act, because it is discriminatory in your opinion, and because it denies the right of free collective bargaining, is that right?

A. Yes.

Q. So "facility" is the King-Thompson Act, to which you refer, is that right?

A. Yes, right.

Q. In the 3-star final of the St. Louis Post-Dispatch for July 6th, 1956 there appeared a first page article with a top headline: "State Expected to File Penalty Suits Tomorrow Over Gas Strike Defiance," then other headlines, and the fifth paragraph of that article purports to quote you, and the sixth paragraph of that article proposes to interpret a statement of yours. Will you read those statements I have marked with ink and see if they are correct (indicating in paper).

Mr. Levin: May I suggest, Mr. Ely, you divide that into two questions?

Mr. Ely: Yes, I will be glad to.

Q. Does the fifth paragraph of that article, which purports to quote you, quote you correctly?

A. The fifth paragraph is correct, sir.

Q. The sixth paragraph does not purport to quote you, but does purport to sum up and interpret your remarks. They quote that to state what you said, but without quoting you, is that correct?

A. No, that is not correct.

Q. If you will let me have that I will read the fifth paragraph, which you say is correct: "Our contract expired and we are trying to negotiate a new one, Joseph Appelbaum, international union officer, remarked to reporters

who asked if the 2200 strikers would return to their jobs.'" That is correct?

A. That part is correct.

Q. I will read the sixth paragraph of the same article and ask you if it is correct—and if you say it is not, in [fol. 181] what respect it is not correct: "Appelbaum and other international union leaders previously had stated flatly the employes would not work because the union regards the King-Thompson Act, prohibiting strikes in public utilities, as unconstitutional." If you say that is not correct then state in what respect it is not.

A. I have not made any quotation to that extent at all. The quotations that I have made, including this section about the contract, was the fact we had a legitimate contract dispute. When asked what we would do I told them our contract expired on June 30th. In respect to the other quotations there, we have a legitimate contract dispute with the Laclede Gas Company over wages, hours and working conditions. We are not responsible for this type of a law on there, and we have the right to say that it is in our opinion—our members, in their opinion—it is unconstitutional, and we have a right to say that we are striking over wages, hours and working conditions.

Q. When you say "this type of law" you mean the King-Thompson Law?

A. That's right.

Q. Then it wasn't wrong, was it, when it said you stated you would not work because the union regards the King-Thompson Act as unconstitutional? Isn't it a fact—

A. No, it isn't.

Q. Wait until I finish my question. Let's get down to brass tacks about this. Is it not a fact that you have stated repeatedly that the striking members of these unions will not return to work because they regard the King-Thompson Act unconstitutional—that is one of the reasons you have given?

Mr. Levin: I object to that as being repetitious. The witness stated that is not what he said. He answered what he said was that the members are striking because of wages, hours and working conditions. If Mr. Ely wants a categorical "No"—

Mr. Ely: Yes or no—I am entitled to it.

[fol. 182] The Court: Objection overruled.

A. Mr. Ely, we are in a legitimate contract dispute with the Laclede Gas Company over wages, hours and working conditions. We are on strike because of that.

Mr. Ely: I won't suggest you might make a recording of that answer, as it was of Mr. Rogers' statement, but I will ask you again if you have stated on various occasions that one of the reasons the employes would not work was because the employes and the union regard the King-Thompson Act prohibiting strikes in public utilities as unconstitutional?

A. I have not made that statement, sir.

Q. All right. You have already testified that you did say: "We believe it—" the King-Thompson Act "—violates our right of collective bargaining and our right of free speech. We are going to exercise our right, guaranteed to us by federal law, of withholding our hire if we are unable to get an agreement with the company." You said you did say that?

A. Yes, I did.

Q. Did you mean by that you were going to exercise your right of withholding your hire regardless of any provision of the King-Thompson Act?

A. It doesn't say that.

Q. Did you mean that?

A. I did not mean that.

Q. Did you mean then—

A. Let me answer.

Q. Go ahead. You say you didn't mean you would withhold your hire; you didn't mean you would withhold your hire regardless of the provision of the King-Thompson Act?

A. Mr. Ely, a short time ago I testified before this court, as a result of a question from you, sir, and I said that if we reached agreement with the company this afternoon our members would be back to work tomorrow morning. And, it seems to me, that answers the question.

Q. It doesn't. You have also testified, if you are cor-

rectly quoted in this Post-Dispatch of June 30th, saying you were going to withhold your hire if you didn't get the agreement. If you don't get the agreement with the com-
[fol. 183] pany you are going to withhold your hire?

A. The strike would continue until we arrived at a settlement.

Q. You are going to withhold your hire and not go back to work?

A. If we don't reach an agreement.

Q. That is your determination, is it not, regardless of any provision of the King-Thompson Act? Is that your position, regardless of any provision in the King-Thompson Act—that you will, notwithstanding the King-Thompson Act, withhold your hire until you reach an agreement?

A. Mr. Ely—

Q. Answer the question.

A. I will.

Q. Answer the question first and then make the explanation.

The Court: Answer the question and make your statement.

The Witness: Will you repeat the question?

By Mr. Ely:

Q. Is it your position that the strikers will continue to withhold their hire if you are unable to get an agreement with the company, regardless of any provision of the King-Thompson Act?

A. Yes.

Mr. Ely: All right. Now explain, if you wish.

The Witness: Thank you, sir. We sincerely hope that we reach an agreement with Laclede Gas Company—No. 1; No. 2, that if we fail to reach agreement with them, the members of our unions feel that they are carrying on a bona fide strike to attempt to bring about a settlement of wages, hours and working conditions, and we feel we are doing that with the rights guaranteed to us as American citizens and workers.

Mr. Ely: All right.

Q. This article in the 3-star final of the Post-Dispatch dated July 2, 1956, as continued on page 8A of that article —I am not reading now what purports to be a quote from you at all, but the article states that union emergency crews were being set up, or had been set up, and it says: "Union emergency crews are answering calls for ser- [fol. 184] vice. Each call is investigated to determine if an actual emergency is involved." You are familiar with the fact emergency crews were set up?

A. I know they were set up, yes.

Q. Then over in the third column of that article on page 8A of that edition of July 2nd, the first full paragraph, it says: "Possible hazards, the union said, could be failure to check pilot lights, faulty connections, improper venting and ill-adjusted burners. Explosions or asphyxiation could result, the employes contend, before an inspector arrives to check the work." I am not reading that to you as anything you might have said, but I want to ask you if, in your opinion and from your experience, it is true that possible hazard could arise because of such things I have just read—failure to check pilot lights, faulty connection, improper venting, ill-adjusted burners.

Mr. Levin: The quotation is wholly out of context. It is the fifth paragraph, of the possible consequences of the company's failure, having inexperienced people connect risers and turn on heating equipment without experienced help, and this has reference to the consequences of improper connection of the gas heating house unit by improper help, without all of the safety checks being made. I object to it.

Mr. Ely: You are right. I will read the paragraph ahead of that.

Q. (Reading) "The unions rejected proposal changes in company policy regarding the sale and installation of gas heating appliances and the connection of 'risers' when new heating equipment is installed. The company said it had not sold heating appliances since 1952 and did not propose to resume the sale and contended that the 'riser' connections could be made by contractors with subsequent inspection by Laclede employes.

"Union representatives protested that the company was proposing that any installer, whether competent or in-
[Tol. 185] experienced, be permitted to turn off gas, cut into feed line, connect the appliance and restore gas service to all parts of the system, except the new appliance."

Then it goes ahead, and the article says:

"Possible hazards, the union said, could be failure to check pilot lights, faulty connections, improper venting and ill-adjusted burners. Explosions or asphyxiation could result, the employes contend, before a Laclede inspector arrived to check the work." You agree with that, do you?

A. Yes, in regard to the risers.

Q. Could those things happen or occur because of failure of service to the user—could there be ill-adjusted burners because of failure of service—could explosions or asphyxiation result—in your opinion?

A. You are talking on the earlier question about the question of risers, where someone who would mechanically do something that might result in that?

Q. Yes.

A. Using that same parallel, if mechanical effort was not put forth by someone, I assume nothing like that would occur. That specific article was referring directly to our position why we think the company should continue their long past policy of connecting these risers, because if they didn't and the new policy they want to displace it went into effect it is just possible for inexperienced people to connect such riser causing a strain on the meter, and consequently a leak, or maybe have the connection on the meter burst. That is something mechanical somebody is doing. If you are referring to someone in the current situation doing something like that, I suppose it could happen.

Q. I am not referring to that at all. Could such hazards arise because of lack of service?

A. For lack of service?

Q. Yes.

A. I don't think so, in my own opinion.

Q. What is the reason for the setting up of these emergency crews by the union?

A. In order to be doubly sure that if there is any emergencies that arise they would have men experienced to take care of them.

[fol. 186] Q. How many men on the emergency crews set up?

A. I can't answer that. I am sure that will be brought out.

Mr. Ely: Mr. Levin said 14, I think, until midnight, and six until what time?

Mr. Levin: 12:30 to 8:00 a. m.

By Mr. Ely:

Q. Why is it necessary, in your opinion, to have that many men?

A. To have those men ready in the event anything did occur.

Q. What might occur?

A. An act of God of some kind.

Q. Whether act of God or company's, what could occur?

A. A main le[illegible]g, such as has been leaking out in the county for some [illegible]me. It could have gotten bigger. If somebody reported it they would have went out and fixed it.

Q. What else?

A. I don't know.

Q. Do you know how many men are kept, or whether there are emergency crews or not, during a normal time, and if so how many men are on the emergency crew?

A. I know there are, but I can't answer how many.

Mr. Ely: Does your record show that?

Mr. Levin: On week ends and holidays there are four men in the city, four in the county. During the one period of four hours the county has eight men and none after 12:30 midnight.

Mr. Ely: Four in the city and four in the county?

Mr. Levin: Yes.

Mr. Ely: From eight in the morning until twelve?

Mr. Levin: Four in the city during that period, four in the county, for the first four hours eight until twelve.

and eight in the county twelve noon to 4:30, and reduced to four until 12:30, then nothing.

The Witness: We have during normal times, as Mr. Levin stated, on Sundays and holidays, in the City of St. Louis we have four men emergency crew from eight in the morning until noon.

By Mr. Ely:

Q. Do you agree that the union officials should have [fol. 187] established a 14-man crew to stand by from 8:00 o'clock in the morning until 12:30 midnight every day during this time—that it is necessary and proper to have that emergency crew?

A. Do I agree with them?

Q. Yes, with the union officials?

A. Yes, I agree with them, certainly.

Q. Can you tell us why, or do you have an opinion as to why, it is necessary to have a 14-man crew every day during the strike, from 8:00 o'clock in the morning until 12:30 midnight, when in normal times it is necessary to have only a 4-man crew in the City of St. Louis on Sundays and holidays?

A. It is very probable maybe the company should have had that same type of protection themselves and we set it up on the basis of the way it should have been.

Q. The company maybe didn't have enough protection to start with, is that right?

A. I said it was possible.

Q. Do you have that opinion about it?

A. We have a lot of men out on strike. They assign them certain duties, and they assigned them, I suppose, to take care of that work.

Q. Do you know of any emergencies that have arisen since this strike started?

A. Mr. Ely, I have been engaged in all these meetings and I can't answer that.

Q. All right.

A. I don't know.

Q. Just a few more questions: It is true you have already testified that on the 1st day of July, 1956, the union

employes, employes of Laclede Gas, members of these three unions, did cease to work and have been on strike since that time?

Mr. Levin: Your Honor please, the return and answer admit that.

The Court: He has already testified to that.

By Mr. Ely:

Q. Does the action of the workmen in going out on strike meet with your approval or not as an officer of the union?

A. Yes, it meets with my approval. The membership [fol. 188] made those decisions and the strike is in effect.

Q. And you are supporting them in their decision to remain on strike, is that right?

A. I am supporting them in our efforts to obtain an agreement. If we obtain an agreement the strike will be over.

Q. And to remain on strike until the agreement is reached?

A. Until there is some sort of settlement, yes.

Q. It is true, is it not, that the refusal of the 2200 employes to work does necessarily interrupt the operation of the company, doesn't it?

A. Mr. Ely, in regards to that, when you remove 2200 people who are normally working for this utility company, when those 2200 are not there, it is just natural that service cannot be normal. If you will permit me, sir, I would like to say on that previous question—

Q. Go ahead.

A. That I understand that there is proceedings before this court here, and I want you to know that we have the greatest respect for the courts and we will obey the court in whatever their determination may be.

Q. I read that in the paper, and the papers have not misquoted you, have they, as so saying; that is right; they are correct in that, are they?

A. Sir?

Q. The papers are correct in quoting you as saying you will obey the decision of the court?

A. We will obey the decision of the Court.

Q. But not the provisions of the King-Thompson Act?

A. I believe I have answered this adequately.

Q. Let me put it to you this way: If this court decides you should obey the provisions of the King-Thompson Act, will you obey those provisions?

Mr. Levin: I think this is invading the province of the court, highly speculative.

The Court: He may answer.

Mr. Ely: Go ahead.

The Witness: What was the question?

[fol. 189] Q. If the decision of this court is that you should obey the provisions of the King-Thompson Act, then do you mean you will obey those provisions?

Mr. Levin: I would say he asks the witness a legal question and a conclusion, because there are a great many provisions of the King-Thompson Act.

The Court: Sustained to the form.

Mr. Ely: Whether a person will obey the law is not a legal question. He has voluntarily stated, without any question being asked, that he has respect for this court, and that he will obey the decision of this court.

Mr. Levin: May I suggest—

Mr. Ely: He also stated in the course of his testimony that he doesn't—the union doesn't—consider the King-Thompson Act constitutional—he considers it unconstitutional also—and they will continue to withhold their hire until they reach agreement. Now that might be somewhat conflicting.

Q. I want to know, if this court decides and directs you—orders you—or enters an order which requires you to obey the King-Thompson Act, and to recognize it, will you recognize it?

Mr. Levin: Same objection, for the same reason. It asks the witness for a legal conclusion.

The Court: Sustain the objection to the form, Mr. Ely. You may restate it.

Mr. Levin: You brought this suit pursuant to the provisions of King-Thompson. If you would phrase it by say-

ing, "In this action brought under King-Thompson, if it is ordered what would you do?"

Mr. Ely: You may ask it if you want to. I am asking a question that suits me pretty well.

The Court: Go ahead.

By Mr. Ely:

Q. You have voluntarily stated you will obey the decision of this court—right?

A. It is my understanding there are certain proceedings before this court in respect to application for an injunction [fol. 190] of some sort. I don't know what the injunction would contain, or anything of that nature. Whatever this court will decree with respect to the injunction we will obey it. I have said that publicly. That is what I meant, and only what I meant.

Q. And that is true regardless of any reference to any holding that might be contrary to your opinion as to the validity of the law, is that right?

The Witness: Will you restate the question?

Q. You will obey the decision of this court, and even though you might not agree, the court might decide the law differently than you think the law is, is that right?

A. Yes.

Q. That is not true of the Governor's proclamation, though, is it?

Mr. Levin: That is argumentative.

The Court: Sustained to the form of the question.

Mr. Ely: It is argumentative. I believe that's all at this time.

Redirect examination.

By Mr. Levin:

Q. Mr. Appelbaum, after Mr. Rogers called the meeting to which reference was made in the Post-Dispatch of Monday, July 2nd, did your full committee authorize representatives to attend the meeting?

A. Yes, sir.

Q. And you and others of the union did go to the meeting, didn't you?

A. Yes, sir.

Q. Who were the representatives of the union that attended the meeting called by Mr. Rogers?

A. William Wynn, International Representative; Robert Bickel, Director of this area, which is known as District No. 8.

Q. Where was that meeting held?

A. The Jefferson Hotel.

Q. On what date, please?

A. I can't recall the date, Mr. Levin, we have had so many meetings.

Q. Was it July 3rd, the day before the holiday?

A. I believe it was.

[fol. 191] Q. Isn't it true that at that meeting you and your committee explained to Mr. Rogers that you had been in continuous sessions with the United States Conciliation Service?

A. Yes.

Q. Is it also true at that meeting you told Mr. Rogers it was a late day to have to start in a dispute?

A. That's correct.

Q. Did you not tell Mr. Rogers on that occasion you felt and your committee felt it would be better to carry on the Federal Mediation conciliations?

A. I did.

Q. Did Mr. Rogers demur at that, or was he in agreement?

A. He indicated that they were not there to interfere with the processes of the Federal Mediation in a dissertation that he made during his talk there.

Q. Mr. Rogers didn't ask you to negotiate in his presence, or to let him be the mediator then, did he?

A. No, sir.

Q. Was the meeting then ended by common consent?

A. Mr. Rogers asked the parties if they had any comments, and there was brief comment from the union side, and the meeting was over, we shook hands with Mr. Rogers and left.

Q. So far as you know the meeting had been adjourned and there was nothing more left, is that right?

A. Yes.

Q. Thereupon you went to the offices of Federal Mediation and continued to negotiate, is that right?

A. Yes, we did. I forget what time the meeting was set for.

Q. Did Mr. Rogers, any time after that, ever call the parties back together again for any purpose?

A. No.

Q. You have not heard from him?

A. No.

Q. Or has anyone from the union heard from Mr. Rogers ever since?

Mr. Welborn: I object to what anyone else has heard.

The Court: All right.

Mr. Levin: Withdraw it.

Q. Has anyone in charge of the union heard from Mr. Rogers in any form about any meetings he called?

[fol. 192] A. Not in regard to any meetings he called. The only time we heard from him was what I had testified before, when they delivered the proclamation and Mr. Rogers was downstairs.

Q. You did say Mr. Rogers specifically told the people that he was not there to interfere with federal mediation?

Mr. Ely: That was the interpretation of this witness of what Mr. Rogers said.

The Court: It happened while you were out of the room.

Mr. Welborn: I object on the ground repetitious.

The Court: Sustained. It is repetitious.

Mr. Levin: I withdraw it. I'm sorry.

Q. Mr. Appelbaum, who is it who has made the decisions whether to continue or not to continue with negotiations in the contract—the continuation of the contract negotiations with the company?

A. The membership.

Q. How is that done, what is the procedure that has been followed?

A. Meetings are called, reports are made, and they make

a determination as to acceptance or rejection or further instructions to the committee.

Q. At these meetings do you do or have you done anything more than report the progress of negotiations?

A. No, sir.

Mr. Ely: Object as leading.

The Court: Sustained to the form.

Mr. Levin: Withdraw it.

By Mr. Levin:

Q. Just what procedure do you personally follow at those meetings?

A. We bring back a report to them as to the progress of negotiations and render to them completely to the best of our ability.

Q. What happens after that?

A. They consider the report and they make the determination.

Q. How is that done?

A. By members getting on the floor, making a motion, someone seconds it, the chairman asks for remarks, if there is any debates, after debates it is put to a vote, with the majority sustaining.

Q. Is that procedure any different from the usual pro-
[fol. 193] cedure followed in the conduct of union meetings?

A. No, sir, it is the same procedure.

Q. With reference to Defendants' Exhibit J, the 7-part questionnaire, why was this drafted in the first place?

A. Because of questions being raised by the members as to what their status would be, and it was felt that that question should be answered, and for those reasons it was drafted.

Q. Had there already been publications in the press that seizure was about to be brought about?

A. Yes, sir.

Q. Is that when these questions came to you from the members?

A. Yes.

Q. Did you feel competent to answer the legal and other questions propounded by your members?

A. No, sir, I did not.

Q. Was there anyone else on the executive board or negotiating committee who by training or background was competent to handle that task?

A. No, sir.

Q. What did you do then?

A. We discussed that with our attorney.

Q. Was a large meeting of your membership then held?

A. Yes, sir.

Q. Was counsel present?

A. Yes, sir.

Q. Did the membership propound these same questions from the floor as to what the effects of the seizure would be?

A. Yes.

Q. Were there numerous questions asked from the floor?

A. I should say so.

Q. Was it only after that that this questionnaire was developed?

A. Yes, sir.

Q. Was it voluntarily on the part of members whether they would or would not sign the questionnaire?

A. It was purely voluntary.

Mr. Ely: I object to whether voluntary. That is a conclusion.

The Court: Sustained.

By Mr. Levin:

Q. What was said to the members about this question-
[fol. 194] naire addressed to Mr. Rogers?

A. The members were advised that as a result of the questions that were asked by them that a questionnaire was prepared embodying those questions, they were mimeographed and available at the hall for any of our members who desired to sign them.

Q. Did all of your members sign them?

A. I don't think all of them did sign them.

Q. Was anyone required to sign them?

A. No, sir.

Q. They were simply made available, is that correct?

A. Yes, sir.

Q. Were those that were posted to Mr. Rogers signed by the individual members themselves?

A. Yes, sir.

Q. All the union, then, did was to make them available originally and then post them?

A. Yes, sir.

Q. Have your members since then made inquiry or sought to get an answer to these questions from you, or other union officers in your presence?

A. I have been asked whether or not there have been answers, and I haven't been able to give them any because I haven't received any. I signed one of them myself as a worker in the company.

Q. Have you received an answer from Mr. Rogers?

A. No, sir.

Q. Mr. Appelbaum, a question was raised about the notification given to the Federal Mediation and Conciliation Service pursuant to the provision of the Labor-Management Relations Act of 1947. I will ask you to please examine that document and see if that refreshes your recollection (handing document to the witness)?

A. Yes, sir.

Q. Will you also please look at those documents, and I will have them marked for identification (handing papers to the witness)?

A. O. K.

Mr. Levin: Have these marked as Defendants' Exhibits K and L and M, N, O, P.

(Thereupon said six documents were marked for identification as Defendants' Exhibits K, L, M, N, O and P, respectively.)

[fol. 195] Mr. Ely: No objection.

By Mr. Levin:

Q. Mr. Appelbaum, in the official records of the union made available to you as an International vice-president did you find any copies of notices that went to the Federal

Mediation and Conciliation Service regarding this dispute (handing papers to the witness)?

A. Did I find any?

Q. Were there such notices sent?

A. Yes, they were sent, sure.

Q. I show you Defendants' Exhibit L—will you tell the Court what this is?

A. Notice to Federal Mediation and Conciliation Service, notifying them that under the provisions of the Labor-Management—

Q. Is that the 30-day notice on the Taft-Hartley?

A. Yes.

Q. What is the date?

A. March 27, 1956.

Q. That has reference to the dispute of Local 8-6, does it not?

A. Yes.

Q. Was there also attached to that Federal Mediation and Conciliation Service Form FMCS F-7, which is termed "Notice of Dispute"?

A. That's right. That is to be filled out by the local union.

Q. I call your attention to Defendants' Exhibit K, dated March 26, 1956, addressed to E. L. Ramsey, Vice President of Laclede Gas Company (handing document to the witness)—is that the 60-day notice required by Taft-Hartley?

A. Yes.

Q. How was it sent to Mr. Ramsey?

A. Registered mail, return receipt requested.

Q. That is the return receipt attached to that?

A. Yes.

Q. As far as you know, that was received by Mr. Ramsey, was it not?

A. Yes, sir.

Q. Did Mr. Ramsey appear at the negotiations pursuant to that notice?

A. That is correct.

Q. I next show you Defendants' Exhibit N, a letter dated March 26, 1956, addressed to Mr. E. L. Ramsey, Vice President Laclede Gas Company, appearing over the printed signature of Kenny Finnerty, President of Local [fol. 196] 8-194 (handing document to the witness)—is that

in the official files that became available to you as Vice President of the union?

A. Yes.

Q. Is Defendants' Exhibit N the so-called 60-day Taft-Hartley notice?

A. This is the 60-day Taft-Hartley notice.

Q. Was that sent 60 days prior to June 30th?

A. Yes.

Q. Sent by registered mail?

A. Yes.

Q. Is the registered receipt attached?

A. Yes.

Q. What date was that mailed on?

A. This was sent March 26th.

Q. In the normal course of mail it should have been delivered to Mr. Ramsey the following day?

A. Yes.

Q. Did Mr. Ramsey appear at the negotiations pursuant to the notice?

A. He did, sir.

Q. I next show you Defendants' Exhibit O, dated March 27, 1956, addressed to the U. S. Conciliation and Mediation Service, over the printed signature of Kenny Finnerty in the same capacity for Local 8-194 (handing document to the witness)—was that the 30-day Taft-Hartley notice to the Federal Mediation and Conciliation Service?

A. Yes, sir.

Q. Was that sent on the usual form provided for notice of dispute by that federal service?

A. Yes.

Q. I next show you Defendants' Exhibit M, a letter from Daniel C. Rogers, Chairman, Missouri State Board of Mediation, under date April 27, 1956, addressed to Mr. Kenny Finnerty as President of Local 8-194, and to Mr. E. L. Ramsey, Vice President, Laclede Gas Company, which purports to acknowledge notification given to that agency of the existence of a labor dispute (handing document to the witness)—that was received by the union from Mr. Rogers, was it not?

A. Yes, sir.

Q. And the Missouri State Board of Mediation was

given full notice of changes and terms that were desired by the union, was it not?

A. Yes.

Q. I next show you Defendants' Exhibit P, carbon copy of another letter from Mr. Rogers, written on the official stationery of the Missouri State Board of Mediation, dated [fol. 197] May, 1956, addressed to Mr. E. L. Ramsey, Vice President, Laclede Gas Company, and to Mr. Kenny J. Finnerty, President of Local 8-194, acknowledging receipt of Mr. Ramsey's letter advising him of further changes required (handing document to the witness)—was that found in the files of the union, Mr. Appelbaum?

A. Yes, sir.

Q. I next show you—

Mr. Ely: Can't we agree they are what they purport to be?

Mr. Levin: Can it be stipulated that on April 27th—

Mr. Ely: The letters you have in your hand are what they purport to be; they are genuine.

Mr. Levin: I may as well mark them. May we have marked as Defendants' Exhibits Q, R and S these three letters. (Thereupon three documents were marked for identification as Defendants' Exhibits Q, R and S, respectively.) And mark these. (Thereupon two other documents were marked for identification as Defendants' Exhibits T and U, respectively.)

May it be stipulated that Defendants' Exhibits Q, R and S are three letters, dated respectively April 27th, May 8th, and May 23, 1956, from Daniel C. Rogers, addressed to Laclede Gas Company and to Mr. W. R. McLaughlin, President of Local 8-109, acknowledging receipt of notice of the existence of the dispute and change in terms and working conditions demanded by Local 8-109, and acknowledging receipt of the notice given the Missouri State Board of Mediation by Mr. Ramsey of Laclede Gas Company? And that Defendants' Exhibits T and U are letters dated respectively April 27, 1956 and May 10, 1956 from the same Daniel C. Rogers, addressed to Mr. Howard Carson, President of Local 8-6, Oil, Chemical and Atomic Workers, acknowledging receipt of copies of notices of desire to make changes in the present agreement of Local

8-6; and also acknowledging receipt of Mr. Ramsey's letter of April 30th, enclosing a copy of contract and setting out [fol. 198] changes the company desires in the current negotiations. That either the originals or duplicates of each of these notices were sent to Laclede Gas Company, and which will be so identified, it may be stipulated?

Mr. Ely: Yes.

Mr. Levin: May it be agreed the originals may be withdrawn and copies substituted therefor?

Mr. Ely: That may be agreed.

The Court: All right.

At this point, 5:10 p. m., court adjourned to the following day, Friday, July 13, 1956, at 10:00 a. m.

Pursuant to adjournment as above stated, at 10:00 a. m. on July 13, 1956, the trial of said cause was resumed and further proceedings had as follows:

JOSEPH APPELBAUM resumed the stand.

Mr. Levin: We are not able to locate last night Defendants' Exhibit F. It was the printed contract booklet.

Mr. Ely: We may have it.

Mr. Levin: If we can have the Reporter mark this copy.

Mr. Ely: Yes, it is the same thing.

(Thereupon a booklet was marked for identification as "Defendants' Exhibit F—Duplicate.")

Recross examination.

By Mr. Ely:

Q. Mr. Appelbaum, I will hand you Defendants' Exhibit J—that is a copy of one of the fifteen hundred letters—if that is the number—that were sent to Mr. Rogers, is that correct?

A. Yes, sir.

Q. You said you signed one of these letters yourself?

A. Yes, sir.

Q. With attention to the first paragraph the letter is [fol. 199] addressed to Daniel C. Rogers, State Board of Mediation, 1017 Olive Street, St. Louis 1, Missouri.

A. Yes, sir.

Q. (Reading) "Dear Sir: You have announced seizure by you of the properties of Laclede Gas Company, and have ordered all employees to report to work. The officers of my Union have conveyed your request to me and all other members of the Union." Now that is the first paragraph of the letter, isn't it?

A. Yes, sir.

Q. You signed one of these letters?

A. Yes.

Q. What officer of the union conveyed Mr. Rogers' request to you?

A. We discussed this as a result of newspaper articles and discussed it generally at the meetings.

Q. Do you recall who conveyed the request—it was conveyed to you anyway?

A. Be a little more specific, Mr. Levy.

Q. Ely.

A. Yes—Ely. How do you mean?

Q. You say in the letter you signed: "The officers of my Union have conveyed your request to me and all other members of the Union." What officers conveyed the request to you, or conveyed that request to the members of the union?

A. All of us jointly as officers.

Q. Yourself, and you advised the members of the union that Mr. Rogers had requested them to go back to work, is that right?

A. We have announced—What we did say, knowing that the provisions of the law—

Q. Yes.

A. Advised that when the State seizes that under the provisions of the law it provides that the employes are to return to work, and if they don't the union is subject to certain penalties under the law.

Q. You advised them of that?

A. Sure.

Q. And you advised them that they had been requested to go back to work?

A. Under the provisions of the law—

Q. I don't care under what provisions. You are one of them that ordered them—advised them I mean?

A. Yes, that's right; that the law provided that after seizure they were supposed to return to work.

[fol. 200] Q. You are one of the officers then who enjoyed the request to the members of the union?

A. Yes.

Mr. Ely: That's all.

Mr. Levin: No questions.

Mr. Levin: Mr. Ely, can we stipulate on this: I had already intended to issue a subpoena to the Regional Director of the National Labor Relations Board to appear here as a witness—

Mr. Ely: You don't need him.

Mr. Levin: But under the particular rules and regulations written request has to be made to the general counsel at Washington. He has to grant it. And this was—

Mr. Ely: What do you want?

Mr. Levin: It will be stipulated by counsel that the National Labor Relations Board, in the Greenwich Gas case—I will give the citation—found that they would accept jurisdiction over local gas and transmit utilities that have a gross value of business of three million dollars or more per year, though their activities were located in a single state. That the Greenwich Gas case was decided, and the doctrine adopted and repeated in the Nineteenth Annual Report of the National Labor Relations Board published for the fiscal year ending June 30, 1954. That that rule is and has continued in full force and effect since the date of the decision in the Greenwich Gas Company case. That pursuant thereto, in September, 1955, in the two certification cases, the National Labor Relations Board did, on the application of Laclede Gas and Locals 8-6 and 8-194, assume jurisdiction of the representation and labor relations question pursuant to the provisions of the law and its certification to the defendant unions following the doctrine there announced in the Greenwich Gas case.

Mr. Ely: I haven't read the Greenwich case and I will not stipulate. I will stipulate that the booklet entitled "Nineteenth Annual Report of the National Labor Relations Board June 30, 1954" is a correct report of what it contains; and where it states that the National Labor Re-

[fol. 201] lations Board has done anything we will stipulate

whatever it says is truly reported. I haven't read the Greenwich Gas case, so I can't stipulate to the effect of it.

Mr. Levin: We cannot stipulate on the matter of jurisdiction.

The Court: Can you agree that the Court may consider that portion of the report?

Mr. Ely: Certainly. I said we will stipulate everything in this book is truly reported. And this book on the rules and regulations.

Mr. Levin: I brought them up only to show the difficulty of getting the Regional Director to testify.

Mr. Ely: Anything you want to read out of that report may be read.

The Court: All right.

Mr. Levin: May I read from the record from the Nineteenth Annual Report of the National Labor Relations Board on page 4, subsection 8, the first paragraph?

Mr. Ely: You want to mark that as an exhibit?

Mr. Levin: Yes. Thank you. This would be Defendants' Exhibit V.

(Thereupon said pamphlet was marked for identification as Defendants' Exhibit V.)

Mr. Levin: On page 4—beginning on page 2, subheading "New Standards for Asserting Board Jurisdiction." "After the close of fiscal 1954, a majority of the Board announced revision of the standards which the Board follows in determining whether or not to assert jurisdiction in cases brought to it. The earlier standards were established in 1950. The majority stated the new standards involved in the cases decided as follows:

"We have determined that in future cases the Board will assert jurisdiction—

"1. Over enterprises which annually meet one or more of the following standards:"

[fol. 202] Then skipping subsections 1 to 7, inclusive, and going to 8:

"8. (Utilities and Transit Systems:) over local public utility and transit systems affecting commerce whose gross value of business is $3,000,000 or more per annum."

Footnote "10" stating: "Greenwich Gas Co., 110 N. L. R. B. No. 91. See also Brooklyn Borough Gas Co., 110 N. L. R. B. No. 11; compare Southwest Mississippi Electric Power Assn., 110 N. L. R. B. No. 245, and Cascade Natural Gas Corp., 110 N. L. R. B. No. 154 (jurisdiction declined)."

Finishing the footnote: "Rural electric cooperatives are considered analogous to local public utilities." Citing "Clay Electric Cooperative, Inc., 111 N. L. R. B. No. 24."

That the jurisdictional standards so announced by the Board have remained in full force and effect until the present date—the date of this hearing. May that be so stipulated?

Mr. Ely: Yes.

WILLIAM LAVELLE, being sworn, testified:

Direct examination.

By Mr. Levin:

Q. Please state your name?
A. William LaVelle.
Q. Where do you live, Mr. LaVelle?
A. 7509 Cory Place, St. Louis County, Missouri.
Q. What is your position or occupation?
A. I am the Financial Secretary and business representative of Local 8-6, Oil, Chemical and Atomic Workers International Union.
Q. For how long have you occupied that position?
A. Since 1949.
Q. Is that an elective office?
A. Yes, sir.
Q. With what frequency do you stand for election? How often are you—what is the term of office for which you are elected?
A. Yearly.
[fol. 203] Q. You have been annually re-elected to that position?
A. Yes.
Q. Is that a full-time paid position in the union?
A. Yes, sir.

Q. Mr. LaVelle, in that office what are generally your duties?

A. To handle the business of the union—between the company and the union. Also to handle any necessary complaints and see that the contract is carried out by the company and the union.

Q. Are you also in ultimate charge of the matter of Local 8-6 remaining in compliance with the regulations of the National Labor Relations Act?

A. Yes, sir.

Q. Pursuant to Section 9 of the Labor-Management Relations Act of 1947?

A. Yes, sir.

Q. Just what does that compliance status require?

A. It requires that we give a financial report, and also send in—

Q. How frequently is that financial report required to be given?

A. Yearly.

Q. Is that filed with the Bureau of Labor Standards in the United States Department of Labor?

A. Yes.

Q. Where is that filed?

A. In our union office.

Q. Your union office files it in Washington, D. C., does it not?

A. Yes.

Q. What else must be filed?

A. Also a non-Communist affidavit.

Q. Is that a requirement of the Labor-Management Relations Act of 1947?

A. Yes.

Q. How often is that filed?

A. Yearly.

Q. Have you and all the officers of your union filed the non-Communist affidavit yearly since the adoption of the act of 1947?

A. Yes, sir.

Q. Is there any requirement under the law for the posting of financial information and publication of it?

A. Yes. And it is done yearly.

Q. Has your local union complied with that requirement?

[fol. 204] Q. Are you required to furnish evidence of that fact to the National Labor Relations Board?

A. Yes, sir.

Q. Has your local union done that annually?

A. Yes, sir.

Q. Does the National Labor Relations Board issue to the local union what is known as a certificate of compliance?

A. Yes.

Q. Does Local 8-6 have such a certificate of compliance at this time?

A. Yes, sir, we do.

Q. Has it had such a certificate of compliance issued by the National Labor Relations Board since the adoption of the Labor Relations Act of 1947?

A. Yes.

Q. Has it been in compliance continuously?

A. Yes.

Q. There has earlier been testimony that Local 8-6 was certified as the bargaining agent for the production and service employes of Laclede Gas pursuant to an election conducted under the auspices of the National Labor Relations Board?

The Court: Mr. Levin, I don't want to interrupt you, but I think you have been all over this. I really don't see much point in cumulative testimony on this matter.

Mr. Levin: The only reason, this is the gentleman who signed the paper.

The Court: The other gentleman testified they had done so. It seems to me that is sufficient.

Mr. Levin: All right, your Honor.

Q. After the sending of the notices to the Laclede Gas Company of desire to terminate or modify Local 8-6's contract and the notices sent to the United States Conciliation and Mediation Service and to Mr. Daniel C. Rogers of the State Board of Mediation of Missouri, did your local union attempt negotiation with Laclede Gas Company?

A. Yes, sir.

Q. Who headed the negotiation team for the union?

A. William Wynn.

Q. Were you a member of that committee?

A. Yes, sir.

Q. How large was the committee?

A. Well, I think there is approximately nineteen people on the committee.

[fol. 205] Q. Were the other locals of Oil, Chemical and Atomic Workers International Union also represented on that negotiating committee?

A. Yes, sir.

Q. Were those Locals 109 and 194?

A. Yes.

Q. Who is the President of Local 109?

A. William McLaughlin.

Q. Is that the same William McLaughlin to whom Mr. Rogers addressed this letter that was introduced in evidence yesterday?

A. Yes, sir.

Q. Who is the President of Local 194?

A. His last name is Finnerty.

Q. Is that Kenny Finnerty?

A. Yes.

Q. You don't know if that is a nickname or his full name, do you?

A. It is not his full name.

Q. Were Mr. Finnerty and Mr. McLaughlin on that negotiating team?

A. Yes, sir.

Q. Were there other representatives of 109 and 194 who formed part of the negotiating committee?

A. Yes, sir.

Q. Can you name those?

A. Well, in 109 Vincent Zito. 194 it was Finnerty, Paubel —there is two others I am not too well acquainted with.

Q. You have seen the petition filed in this case naming numerous defendants. I would like to tender that to you and see if these were the members that comprised the negotiating committee: Howard Carsen, who is also President of Local 8-6?

A. Yes.

Q. You as the Financial Secretary and business representative?

A. Yes, sir.

Q. Joseph Richter, who is Vice-President of Local 8-6?

A. Yes, sir.

Q. George O'Brien as sergeant-at-arms of the union?

A. Yes, sir.

Q. Howard R. Kennedy is a member of the committee?

A. Yes, sir.

Q. Gregory E. Brengle?

A. Yes.

Q. He is just a member of the union, is that right?

A. Yes.

[fol. 206] Q. William T. Brengle, who is also just a member of the union?

A. Yes.

Q. Lester Paolucci, Milton J. Sonderman, George E. Twellmann and Lawrence Langford, were they on the negotiating committee?

A. The group you have named are stewards that came in at the time the company had thrown this other object in the way of our negotiations. They are not elected to the negotiating committee.

Q. They were shop stewards and did participate in the negotiations, but were not part of the negotiating team, is that correct?

A. Yes, sir.

Q. They came in on specific problems that arose?

A. Yes, because it pertained to their department.

Q. Wilbur J. McLaughlin as President of Local 109?

A. Yes.

Q. Pasco Batisto as the shop steward was on the negotiating committee?

A. Yes.

Q. Benjamin Betts and Vincent Zito from 109?

A. Yes.

Q. Kenny J. Finnerty as President of 194?

A. Yes.

Q. Joseph McDonald as Vice-President of 194?

A. Yes, sir.

Q. Joseph Paubel as Vice-President of 194?

A. Yes, sir.

Q. And Arthur E. Junghans as International Executive Board member?

A. Yes.

Q. That comprised the entire negotiating committee, did it not?

A. That's right.

Q. Later on Joseph Appelbaum came into the picture as Vice-President of the union?

A. Yes, sir.

Q. William Wynn had from the inception participated as a member of the committee in his capacity as International representative, is that right?

A. Yes.

Q. When did you begin your negotiations with Laclede?

A. I believe it was June 6th. I am not positive of that date.

Q. Did you carry on negotiations regularly from that date on?

A. Yes, sir, we have.

Q. Do you recall at what time or point the United States [fol. 207] Mediation and Conciliation Service was called in?

A. I think it was June 21st. I am not positive on that date.

Q. Did the number of meetings and the duration thereof increase after the U. S. Conciliation was in?

A. Yes, the hours spent in meetings did.

Q. Did you have continuous sessions on some occasions?

A. As the union was available throughout the day and night. However, we did have to stand by and cool our heels and wait for the company on many occasions.

Q. The union had to wait on the other side?

A. That is correct.

Q. Was there a meeting of the membership held June 25, 1956, of all three locals?

A. Yes, sir.

Q. Where was that held?

A. At the I. U. E. Hall, 6100 Etzel.

Q. Were you present in person?

A. Yes.

Q. Was there a platform or dais on which you sat?
A. Yes.
Q. Were the other International officers there?
A. They were.
Q. Will you state to the Court what happened at that meeting?
A. There was a complete report of negotiations given to the membership.
Q. By whom was that report rendered?
A. Joseph Appelbaum.
Q. On the 25th of June I am asking now.
A. Oh. William Wynn, I should say.
Q. Mr. Wynn was the International representative?
A. Yes.
Q. Without giving the conclusion, you say a complete report of negotiations, what did that consist of, what did he report?
A. There was reported to the rank and file of the three unions that we were not in agreement on numerous items of the contract, plus the fact the company had thrown in this other item of riser connections.
Q. What were the numerous items of dispute between [fol. 208] your union and the company, without giving the details?
A. Wages, vacations, our insurance plan; and there was, I think, two other items that were in dispute.
Q. And the riser connections?
A. Yes, and the riser connection, of course.
Q. When had the riser connection dispute first arisen?
A. On June 18th.
Q. The company had not at any time mentioned the riser connections in the earlier negotiations, is that correct?
A. No, sir. In fact, we have had outside information as to gas—
Q. Don't testify about hearsay.
A. No, sir.
Q. You began your negotiations about what time in June?
A. Around June 6th I believe it was.
Q. Approximately two weeks later the riser issue first came up, is that correct?

A. Yes.

Q. Were you formerly an employe of Laclede Gas?

A. Yes.

Q. For how long and during what period?

A. I will be with the company thirty years November 21st of this year.

Q. You say you will be—you are on leave of absence, is that correct?

A. Yes, sir.

Q. Pursuant to the terms of the contract with Local 8-6 granting leave of absence to officers of the union?

A. Yes.

Q. You retain your seniority status with the company, do you not?

A. Yes, sir.

Q. Are you familiar with the riser connection practice at the company?

A. I am.

Q. For how long has the company made the riser connections on house heating units with its own employes, to your knowledge?

A. As long as there has been house heating units.

Q. How long have there been house heating units, to your knowledge?

A. For at least thirty years, since I have been there.

Q. That was true when you began working for the company thirty years ago?

A. Yes.

[fol. 209] Q. And it has not changed?

A. Yes.

Q. That was one of the issues in dispute on which a report was made to the membership?

A. Yes.

Q. Was any action taken by the membership of the three local unions that night?

A. Yes, sir.

Q. State what action was taken and how it was done.

A. The action was taken off of the floor by the membership that if the question was not resolved at the duration of our contract we will give the authority to the negotiating committee to call a strike if it became necessary.

Q. Was that motion seconded?
A. Yes.
Q. Was there a vote taken?
A. Yes, sir.
Q. Was there a count made of the voting?
A. Yes, sir.
Q. What was the result of the polling of the membership at that meeting?
A. 1658, I believe, to 43.
Q. There were 43 dissents?
A. Yes.
Q. Did your negotiating committee thereafter continue to negotiate or attempt negotiating with Laclede?
A. We did.
Q. Did you do that with the aid and assistance of the U. S. Conciliation Service?
A. Yes.
Q. Up to that time no state agency or agent had asked to come into the picture, had they?
A. No, sir.
Q. Up to that time had you heard anything from the Missouri State Board of Mediation or any of its officers or representatives other than the letter which has been identified in this case?
A. No, sir.
Q. So you continued to negotiate with the aid of U. S. Conciliation Service?
A. Yes.
Q. Were you negotiating on June 29th, the day before the expiration of the contract?
A. Yes.
Q. Were you negotiating on the day of June 30th, the last day of the contract?
A. Yes.
Q. For how long had you been negotiating that day?
A. Until midnight.
Q. You negotiated continuously until midnight June 30th?
A. Yes.
[fol. 210] Q. Had you, by midnight of June 30th, arrived at an agreement with the company?

A. No, sir.

Q. What were you still in difference on?

A. On wages, vacations and on insurance, risers, and there was another item that we had that still wasn't resolved in reference to the manner of how we would bid from one department to another, or how we would request moving from one department to another.

Q. Were you in accord on the matter of surgical benefits?

A. No, sir.

Q. So that was still another matter?

A. That was within the insurance.

Q. Are all the subjects about which you were then in disagreement matters which were formerly covered in your labor union contract identified as Defendants' Exhibit F?

A. Yes, sir.

Q. Did a strike against the company then begin?

A. Yes, sir.

Q. Who comprised the company's negotiating team, the men that made it up?

A. Mr. Ramsey, Mr. Klink.

Q. That is Mr. Elmer Ramsey?

A. Yes.

Q. What is his position with the company?

A. Vice-president of the personnel.

Q. Has Mr. Ramsey always, since he attained that position, negotiated the labor contract with your union?

A. Yes.

Q. The matter of your labor contract is taken up primarily with him, is that right?

A. Yes.

Q. Who else was on the team?

A. William Klink, assistant officer.

Q. How do you spell that?

A. K-l-i-n-k.

Q. He is Mr. Ramsey's assistant?

A. Yes.

Q. And acts in the same capacity with and for Mr. Ramsey, is that correct?

A. Yes.

Q. For how long has Mr. Klink operated in that way?

A. Well, as long as I can remember. I know Mr. Ram-
[fol. 211] sey, however, he has been in personnel as long as I can remember.

Q. Before Mr. Ramsey assumed that position Mr. Klink had been in personnel?

A. Yes.

Q. Who else? A. Mr. Frank Leonard.

Q. What is his position?

A. He is also an assistant to Mr. Ramsey.

Q. Who else?

A. I can't quite remember the other person's name. This is the first year he has been in.

Q. In any event, it is not Mr. Burgess, is it?

A. No.

Q. Mr. Burgess was only an occasional observer or participant in the matters, was he?

A. Yes.

Q. Isn't this true, that in the chain of command at Laclede Gas Company matters relating to personnel and matters between the union and the company were taken up primarily with Mr. Ramsey?

A. That is correct.

Q. And you are supposed to and are required to take them up with him?

A. Any time it is done through mail it is mailed to Mr. Ramsey. If he is not available it is handled by Mr. Klink.

Q. It is in Mr. Ramsey's department?

A. Yes.

Q. Before the inception of the strike was a member of the company's team negotiating the contract advised the union was setting up an emergency crew?

A. Yes.

Q. Who was notified?

A. Mr. Ramsey.

Q. He was there his full time at the time, is that correct?

A. Yes.

Q. Mr. Ramsey say anything about your setting up this emergency crew?

A. Mr. Ramsey asked us what we would do in case of an emergency. We stated to him the union would set up

a sufficient amount of people to handle any emergency out of our union office, and that we had additional telephones set up in order to handle it. We would answer the calls of the public. His answer was just "O. K.," that's about all.

Q. So he asked what you would do in event of an [fol. 212] emergency and you told him the arrangements were being made and his answer was "O. K.," is that right?

A. That is correct.

Q. Mr. Ramsey didn't say anything to you about your not touching the company's equipment, did he?

A. No. I think his feeling was rather on the contrary through expression. However, he didn't do too much about it.

Q. Did he make any other expression other than "O. K."?

A. No, that's all.

Q. The matter of handling emergencies and the emergency crew is done by members of Local 8-6, is that correct?

A. Yes.

Q. Is that done by some employes who formerly did it when they are working for Laclede Gas?

A. Yes, I would say it is set up the same as if they were working for the company. We have one of our workers set up in the capacity that normally would be a general foreman; our crews are headed by a crew foreman, with what we call a leak truck, and gas men who are people who normally handle these things.

Q. So that organizationally the structure of your emergency crews is the same as when the men were working for the company?

A. That is correct.

Q. Was anything done by the union to publicize generally the facilities it would make available during the course of the strike?

A. Yes, it was published in a newspaper; also, the telephone numbers were published where the public could call.

Q. Mr. Ely had here yesterday the St. Louis Post-Dispatch of July One and that showed some telephone numbers where the union could be called. You furnished them to the press, did you not?

A. Yes.

Q. Was that also published in the St. Louis Globe Democrat?

A. Yes, sir.

Q. What did the union do about telephone facilities? Did it just rest content with whatever lines it already [fol. 213] had?

A. No, we have four more lines available now than we had in the past.

Q. The union applied to Southwestern Bell for four more lines?

A. We had one additional line which was never used and we ordered three more.

Q. Did Southwestern Bell install those additional lines prior to the strike?

A. Yes, on emergency basis.

Q. Who is paying for those telephone lines?

A. The union.

Q. Has the service of the emergency crews been also available at all times since the inception of the strike?

A. Yes, they have answered numerous calls; some, as an example, that we seen in the newspaper last night. I don't know why it was put that way. We corrected that later. I have records that they corrected many leaks since we have been on strike and have answered some 150 calls.

Q. Did you, prior to the time Lieutenant Moran came to visit the office keep a detailed record of the calls you responded to?

A. Not very well, it wasn't rather detailed, but since he came there we are keeping them in detail.

Q. Prior to the visit by Lieutenant Moran had you responded to whatever calls came through?

A. Any leak calls by the public were answered.

Q. There has been some testimony about a manhole fire in St. John's. Can you tell the Court about that?

A. We answered that call. Our crew found the hole ventilated and it wasn't in any hazardous condition.

Q. I show you, Mr. LaVelle, a piece of paper, and ask you to state what that is (handing document to the witness)?

A. This paper is a record of some of the calls that we have answered. It is a very small amount of what we have

answered, but it is in detail for the Court as to how we are handling it.

Q. I call your attention to this item down towards the [fol. 214] bottom—state what that is—headed "Phone numbers".

A. The phone numbers available for the public to call.

Q. Will you tell us what were the old numbers and what are the new numbers?

A. Old numbers FRanklin 1-0277, FRanklin 1-0278, JEfferson 1-2458.

Q. Did you retain and continue those old numbers?

A. Yes.

Q. What additional numbers have been added?

A. JEfferson 1-4086, JEfferson 5-7702, JEfferson 5-7700, JEfferson 5-7701.

Q. Have those phones been used by the public generally?

A. Yes.

Q. Have you been called by the police and fire department from time to time?

A. Yes.

Q. Look at the item July 9th that refers to a manhole fire in St. John's, and in your capacity as business representative of the union will you tell what was reported to you about that?

A. The report is as follows, and I think it is self-explanatory as it is in the record here (reading): "12.08 A. M., Man hole on fire in St. Johns. Fire Dept. wishes to have same checked for gas leak. Fire at Engle and Thomas. Called in by Mr. McLaughlin of the Sewer Dept."

Q. That is Mr. McLaughlin of the Metropolitan Sewer District, is that right?

A. Yes.

Q. Then what?

A. "R. Hasten. Crew found manhole ventilated and in safe condition."

Q. Your emergency crew went and examined the manhole and found it in safe condition and departed?

A. Yes.

Q. Is a manhole fire anything unusual for Laclede Gas?

A. No, it is not unusual. In St. Louis County Laclede gets—I would like to give as small a number as I can, but they do have some two thousand unrepaired leaks.

Q. Laclede piled those up before the strike, is that right?

A. Yes, all prior to the strike.

Q. So far as you know, those two thousand unrepaired [fol. 215] leaks in the county before the strike were not deemed to be an emergency, is that right?

A. No. In questioning the management, in our opinion the pipe wasn't properly treated, due to the dead vegetation, trees and shrubbery in the county caused by gas leaks, the company's answer is it is cheaper to let them leak than to repair them. They have a system where they send a general foreman out on street leaks, and if in his opinion the leak is not going into a house or a building he then just routes it out as normal work. And the amount of leaks reported are too numerous for the crews we have. They say that is the proper way to handle a high-pressure system, and that is their business.

Q. They say that is the way they are going to run the company, and you can't do anything?

A. No.

Q. Even though the leaks are of sufficient density to kill trees and vegetation, they have let two thousand of them accumulate in that way?

A. Yes. And fires is a common thing out there. The ground many times has caught fire, when people burn leaves. And I have heard some people, in order to get the company out to repair the leak, will set it on fire.

Q. The way to get them to come out, put a match to the leaves?

A. Yes.

Q. That is normal operating procedure for Laclede?

A. Yes.

Q. Since Officer Moran came in did you keep a more detailed record—will you tell us what else may have happened on July 9th (handing document to the witness)?

A. On July 9th there was another complaint called in at 4:40 p. m.: "Lot off Hickory Hollow Lane, Kirkwood, high left broke gas drip off Craig to Woodbine, removed a $\frac{3}{4}$ by 18-inch nipple off of drip. No. 2, broken by grader. No. 3,

left hole open—new subdivision. Leak crew will have to at a later date replace 18-inch nipple."

Q. Were your crews called out to this incident on Manchester about which there has been some testimony where the fire department was there?

A. Yes, sir.

[fol. 216] Q. Were they called by the fire department?

A. Yes, sir.

Q. Responding to the call of the St. Louis Fire Department the emergency crews immediately went out?

A. That is what I understand. There is no written record of that.

Q. They did what the fire department requested them to, is that correct?

A. They did, and they will.

Q. Isn't it true in the normal course of operation of the company's business the fire department is usually called to put out a fire?

A. Yes, sir.

Q. And that when a report of fire is made to the company it always calls the fire department?

Mr. Welborn: I object. This is all irrelevant, but I object to the leading.

Mr. Levin: I will withdraw it.

Q. In the normal operation of the company as you know it who is called in the event of a fire?

A. Many times it is our crews, at times it is the fire department and the fire department relays it to us.

Q. Has the practice changed since the strike began?

A. No.

Q. The fire department continues to call, is that correct?

A. Yes.

Q. There has been some testimony about a doctor being out of gas at 4203 Olive. Did you cause a report to be made of that?

A. Yes.

Q. Is the doctor getting to sterilize his equipment, Mr. LaVelle?

A. Yes, sir.

Q. What did the doctor report?

A. This is the report: "Dr. C. L. Jue, no gas. Found meter and services stopped due to water in lines. Shut off meter and instructed customer, Dr. Jue, we would check to see if any means could be found to restore service as soon as possible. Dr. Jue states he has electric hot plate and an electric sterilizer he is using for household and professional purposes."

Q. This was the first complaint of that kind that had come to your attention, is that correct?

A. We had one other complaint from a doctor. However, [fol. 217] it had nothing to do with gas pressures. We did go out because it was a doctor. He stated, and it is on the record, that he had someone install a house heating burner. They collected the money, then left, and he was raising the dickens about it.

Q. He had a complaint because of someone's breach of contract, is that right?

A. Yes.

Q. The only two calls you were aware of that involved members of the medical profession was one from Dr. Jue and the other one you have just testified about?

A. Yes.

Q. One, because the doctor had a complaint over the installing of his heating equipment?

A. Yes.

Q. And the other, the doctor is temporarily sterilizing by hot plate and electric sterilizer?

A. Yes.

Q. Would you also refer to the record of July 12th and tell the Court the nature of other calls to which your emergency crew has responded?

A. On July 12th, at 12:20 p. m., at 10873 Spring Garden Drive, Glasgow Village, broken high-pressure main called by Officer Wensch, Badge No. 76, telephone No. PArkview 7-8200—

Q. Let me stop you there. PArkview 7-8200 is the telephone number of the St. Louis County Police Department, is it?

A. I would imagine so.

Q. Officer Wensch is a member of the St. Louis County Police Department?

A. Yes.

Q. All right.

A. Service tee broke off at 4" main, also broke off ¾" at curb cock. Building not completed, gas cut off at main. Returned to office at 2:40 P. M. J. Kunz, E. Schonhorst.

Q. This had reference to a building unoccupied, is that correct?

A. Yes.

Q. The service pipe was broke off at the curb cock?

A. Yes.

Q. Your men were in time to—

A. They plugged it at the main.

Q. Any other calls on July 12th and response?

A. At 9:20 A. M., 3420 Minnesota, house full of gas. [fol. 218] There is no 3420 Minnesota. We found the correct address and they went out there and corrected it, whatever it is. I have no record of that. 4203 Olive—that was the same one.

Q. Dr. Jue, which you talked about?

A. Yes. 5:05 P. M., leak reported by Police Department at Hamilton and Lotus.

Q. That is in St. Louis?

A. Yes.

Q. That was reported by the Metropolitan St. Louis Police Department?

A. Yes.

Q. Was Lieutenant Moran's testimony correct that the Police Department does not call you—have they been calling you regularly?

A. Yes, there are calls if they anticipate a leak.

Q. But this was called in by the St. Louis Metropolitan Police Department?

A. Yes.

Q. And what happened there at Hamilton and Lotus?

A. "Sent Street Department crew to inspect same. Gas going through regulator making hissing sound. Gas odor coming from vent on top of control box. H. Smith, H. Givens, went out on this." That would mean due to pressure at times the gas does make a hissing noise when it is

going through the regulator. They have a vent pipe sticking up from the ground where there is sometimes gas odors, which is no hazard.

Q. They went out and found it wasn't a hazard?

A. Yes.

Q. What else happened July 12th?

A. "At 2:40 P. M., 4125 Lindell, J. M. Addis, gas odor in house. Crew found butterfly pilot valve leaking. Removed same and plugged manifold. Found simmer burner leaking. Closed off orifice and spotted meter check lines for leaks. All O. K."

Q. In that instance down there, complaint of gas odor, your crew went out and found what was wrong and immediately corrected it and left?

A. Yes.

Q. Any other gas calls or odors within the house or building were normally taken care of?

A. Yes.

Q. Anything else of the same character on that day or [fol. 219] the day before?

A. On the day before, at "9:10 P. M., 334 North Sarah Street, Daniels, second floor, found gas leak in fuel run to first floor range. Repaired same, checked meters and foundation wall. O. K."

Q. Are these the types of complaints and corrections that have been handled by your emergency crews since the inception of the strike?

A. Yes, sir.

Mr. Welborn: Object as a conclusion.

The Court: I will permit it in the interest of expedition.

By Mr. Levin:

Q. Has Lieutenant Moran come back to see you since he made these complaints last Saturday?

A. Not to my knowledge.

Q. He has not asked you for records or anything else, has he?

A. Not to my knowledge.

Q. So far as you know, he displayed no further interest other than in the courtroom yesterday?

A. Not to my knowledge.

Q. Have you, since July 1, 1956, continued to negotiate with Laclede Gas Company?

A. We have.

Q. Have you had assistance in the conduct of those negotiations for your new contract?

A. Yes, sir.

Q. What assistance has that been?

A. The National Mediation Service.

Q. The United States Conciliation and Mediation Service?

A. Yes.

Q. By Commissioners Sheehan and Hale, whose names have been mentioned by Mr. Appelbaum?

A. Yes.

Q. When was the first date you heard from Mr. Rogers, Chairman of the State Board of Mediation?

A. That was mailed to the President of our union.

Q. I mean after the beginning of the strike.

A. July 5th, I think it was.

Q. To refresh your recollection, wasn't it before the 4th that Mr. Rogers had called the parties together?

A. That is correct. I thought you meant through petition.

Q. What date was that when Mr. Rogers called the parties?

A. That I don't recollect, Morris.

[fol. 220] Q. The date before July 4th?

A. Yes, I think it was July 3rd.

Q. Did your committees authorize a sub-committee to go and meet with Mr. Rogers?

A. We did.

Q. Who was on that sub-committee?

A. Mr. Joseph Appelbaum, William Wynn, Richard Bickel.

The Court: Again, Mr. Levin, we have been over this. Mr. Appelbaum testified to it.

Mr. Levin: Yes.

Q. Did you at that meeting—or did Mr. Rogers request that you meet with him?

A. Yes, sir.

Q. Was he at that time told that a meeting called by him had caused the cancellation of a negotiation meeting before the U. S. Conciliation Service?

A. That's what I understand.

Q. What did Mr. Rogers say to that?

A. I don't recollect. I wasn't in the meeting at that time.

Q. Did you see or hear from Mr. Rogers at all from and after that date?

A. Well, yes, when the petitions were served to our President we were told he was downstairs in the corridor.

Mr. Ely: What?

The Witness: I had been sitting in the room where the petitions were served.

By Mr. Levin:

Q. You have reference to the proclamation and executive order?

A. Yes.

Mr. Ely: I didn't hear what you were told.

The Witness: The state patrolman said he was downstairs in the corridor, and if he could assist us in any way he would come up. If I remember, we were in there with the conciliators. I think that is what was told to him. I had not been served the No. 1.

By Mr. Levin:

Q. Mr. Rogers didn't even come up?

A. No.

Q. He sent word through the trooper who served the papers?

A. Yes.

Q. Has Mr. Rogers since then asked to meet or participate in the negotiations?

A. Not to my knowledge.

[fol. 221] Q. Has Local 8-6, Local 8-194 or Local 8-109 entered into a final and conclusive agreement with Laclede Gas on the issues in dispute between you?

A. We have not.

Q. Are you still in dispute over the subject of wages?

A. We are.

Q. Are you still in dispute over the subject of vacations?

A. We are.

Q. Are you still in dispute over the subject of additional pay for holidays?

A. I believe the holiday question is cleared up. I wasn't in the negotiations yesterday.

Q. Are you in complete accord with the company on the issue of risers?

A. No.

Q. On all those three items there is a marked difference?

A. Yes.

Q. But no binding bargaining agreement has been entered into?

A. That's correct.

Q. Following the service of Executive Orders 1 and 2 and the proclamation of the Governor—Plaintiff's Exhibits 1, 2 and 5—you did say you conducted further negotiations with Laclede?

A. Yes.

Q. Under whose auspices?

A. Under the United States Conciliation and Mediation.

Q. Has there been a day since July 5th when you have not continued your negotiations under the general supervision and auspices of the United States Conciliation and Mediation Service?

A. I believe there has been one day, a Sunday, directly after—

Q. But on that day your counsel was negotiating, was he not?

A. Yes. That is the only day we were not in negotiation since that time. We were standing by waiting for the company to get into negotiations.

Q. In any event you have been attempting to negotiate at all times?

A. Yes.

Q. In your negotiations with the company has it been agreed that Section 2 and Section 6 of Defendants' Exhibit F, those that refer to the Labor-Management Act of

[fol. 222] 1947, and the union shop limitations there prescribed, shall be carried over into the new contract?

A. Yes.

Q. You have specifically discussed and agreed on that?

A. The company has made a statement that would involve that in our next contract.

Q. So there is no disagreement—this will be carried forward into the new agreement?

A. Yes.

Q. Referring to Defendants' Exhibit H, that with Local Union 8-194, which places limitations on union membership to be: "in accordance with the provisions of Section 8 (a) (3) of the Labor-Management Relations Act of 1947, as amended," and the following sixth paragraph, referring to the Labor-Management Relations Act—has it been agreed will be incorporated word for word in the new agreement?

A. Yes.

Q. Referring to Section 6 of Article I, captioned "The effect of a change in the Labor-Management Relations Act of 1947," has that been in the negotiations agreed to be carried over word for word into the new collective bargaining agreement?

A. Yes.

Mr. Levin: Your witness.

Cross examination.

By Mr. Ely:

Q. Mr. LaVelle, you have testified that you set up an emergency crew and had four additional telephone lines installed?

A. Yes, sir.

Q. At the inception of the strike, or about that time?

A. Yes, sir.

Q. And that you have since then responded to approximately 150 calls of emergencies, is that correct?

A. Yes, sir.

Q. Have there been a great number of other calls which you did not consider emergencies and to which you didn't respond?

A. Well, there are calls, yes. We have had a number of calls that we didn't consider emergencies, and of course we didn't.

[fol. 223] Q. Could you estimate the number of calls that you have received to which you have not responded?

A. No, sir, I sure couldn't. My main interest was in emergencies.

Q. Can you estimate the number of calls from customers who considered the problems emergencies, but which you didn't consider emergency problems?

Mr. Levin: That calls for a conclusion.

By Mr. Ely:

Q. No, I mean have you gotten calls from customers asking for service or relief of some kind which you—can you estimate the number of such calls, rather, which you didn't consider emergencies?

A. No. We have had numerous calls, but I couldn't estimate them.

Q. The number of calls from customers would outnumber several times the 150 you have responded to, wouldn't they?

A. Say that again.

Q. There would be a great many more calls than 150?

A. I imagine there would, yes.

Q. You have testified, I believe, that on yesterday, July 12th, the members of the emergency crew called at Dr. Jue's office and fixed things so he could get gas to sterilize his instruments?

A. That is correct.

Q. I will hand you Plaintiff's Exhibit 9, which was introduced heretofore (handing document to the witness)—that shows that on July 1st, '56, a call was received by Laclede from Dr. C. Jue, at 4203a Olive, reporting no gas, and he needed gas for sterilizing instruments?

A. Yes.

Q. You didn't know about that until yesterday, is that right?

A. Whatever date is on that report would be the date.

Q. They went out yesterday anyway?

A. I think they did.

Q. On the 12th of July?

A. Yes.

Q. That was after that report was introduced in evidence yesterday—that was the first information you had that the doctor was without gas and needed it to sterilize his instruments?

A. Yes. It being a doctor, we would go out immediately, regardless of what his complaint was.

[fol. 224] Q. That wasn't reported to you by Laclede?

A. No.

Q. That report shows it was reported by the doctor to Laclede eleven days before the situation was corrected, is that right?

Mr. Levin: He didn't say the situation was corrected.

By Mr. Ely:

Q. Well, before you gave him gas?

A. The doctor had hot plates that he had been sterilizing with, and I presume from the time his gas was shut off. It was sufficient to take care of his practice.

Q. So that the situation was not corrected, but he was taking care of it with a hot plate?

A. The situation was corrected as long as he had means of sterilizing his instruments.

Q. Did you learn of any other calls here yesterday here in court I mean—that were investigated by your emergency crews?

A. Just the ones I have reported there. Yesterday was the 12th. We reported a number of them that we handled yesterday.

Q. Any of the rest of them learn about in court yesterday besides the doctor's call?

A. I don't understand what you mean.

Q. You learned about the doctor's call from this slip yesterday, didn't you?

A. No.

Q. Didn't Mr. Levin hand you this slip?

A. No.

Q. How did you learn about the doctor's complaint?

A. It was called in to the union office. He might have given it to someone.

Q. When was it called in to your office?

A. Apparently yesterday.

Q. You don't know where the call came from?

A. No, sir, I don't.

Q. In what number of days has the emergency crew responded to 150 calls?

A. From the very time we went on strike.

Q. So that would be twelve days? This is the 13th. Is that correct?

A. That's correct.

[fol. 225] Q. You are testifying as of last night, I suppose?

A. As close as I can, yes.

Q. And you can't estimate the number of calls not responded to—you said that?

A. No.

Q. How many such calls would be answered in normal times in a period of twelve days by an emergency crew?

A. Well, that would be hard for me to answer. I wouldn't know.

Q. Would it be more or less than 150, considerably less or considerably more, or the same number?

A. This is no—I have no record of—have seen no record of management's calls. I would say around the same. That would be just my opinion.

Q. You have testified that they had emergency crews in normal times?

A. That's right.

Q. I assumed, from your testimony, you knew about them. Am I mistaken in so assuming?

A. Would you say that again?

Q. I assumed, when you testified that emergency crews were available at all times, normal times as well as any other time, that you knew all about them. Am I mistaken in assuming you knew about them, or were you just testifying from hearsay, or what?

A. I am not testifying from hearsay, because I didn't at any time see the amount of calls that called in normal times.

Q. I know you didn't.

A. I am testifying what they are doing at this time.

Q. And you don't know, then, how many calls they have in normal times?

A. It would be impossible for me to know.

Q. Well, you don't know?

A. No.

Q. You don't know whether they have 150 in twelve days, or whether they have 15 in twelve days?

Mr. Levin: I object as repetition. The witness says he has no way of knowing.

The Court: Sustained. He said he doesn't know.

[fol. 226] By Mr. Ely:

Q. I want to find out, though. You testified on direct examination that they did have emergency crews at all times. Do you know whether in normal times there would be as many as twelve emergency calls in twelve days—I mean do you know?

A. Yes, I could say that there would be, yes.

Q. Do you know there would be as many as 50?

A. No, I don't.

Q. Then you testified that a call was received at the union office, I think that is right, concerning the fire in the manhole cover at Engle and Thomas, that came from the fire department.

A. Sewer department.

Q. That is McLaughlin?

A. Yes.

Q. The emergency crew went out and found the manhole cover properly ventilated and departed without doing anything about it, is that right?

A. Yes.

Q. They didn't do anything about it?

A. Yes, sir. That is the same thing they would do in normal times. If it is properly ventilated their own supervisions would tell them as long as it is well ventilated there is no emergency.

Q. I am not disputing that, but I am trying to get the facts. You were called by the sewer department?

A. Yes, sir.

Q. That call was received—

A. The sewer department. You continue to say the fire department.

Q. Sewer department.

A. Yes.

Q. That call was received by you in the office?

A. Yes.

Q. Now, when you said that was the number for the fire department, or, I assume, sewer department, either one, to call in normal times for emergency service, what they considered emergency service—

Mr. Levin: I object to that. The witness didn't say it would be normal for them to call the union.

Mr. Ely: I didn't say that. I corrected my sentence.

Q. I said did you say it was the practice in normal [fol. 227] times for the fire department or the sewer department to telephone when they considered emergency service was needed?

A. Yes, any time, and I only take this from the supervisors, who relayed that information to me, that the different townships in the county, the police department, sewer department, whoever would finally anticipate a leak, they would call the gas company. Not the union.

Q. You don't know whether or not such calls have come in to the gas company of your own knowledge?

A. Only through hearsay, what the supervisors have told me. They said they have.

Q. When you said that practice had not changed during the strike—which you did say—you didn't mean then that it was the practice for the fire department to call the union in normal times?

A. No, sir.

Q. What you meant was the practice of the fire department calling, or the sewer department calling, somebody, was the same?

A. The practice of the fire department or the police department calling, whoever did.

Q. To make reports?

A. To make reports, yes, that is part of their duties.

Q. The practice has changed in that now the fire department or the sewer department does at least on some occasions telephone the union office?

A. That is correct.

Q. But in normal times they would telephone the company?

A. Yes.

Q. You said you didn't know, except from hearsay, whether calls had been made to the company by the fire department or the sewer department?

A. If I may—we will have disputes over different types of work. I can name the person, Mr. Fulter—should I tell that?—he stated he couldn't enter into the thing as a grievance, because they call in, the police department of certain areas and the fire department of certain areas. And I think he is an honest man.

Q. As a matter of general information then calls are being made to the company in some instances by the fire [fol. 228] department and sewer department even during the strike?

A. At this time I do not know.

Q. I will hand you this document which has been identified and heretofore introduced as Defendants' Exhibit J (handing document to the witness)—that is the letter of Mr. Rogers which Mr. Appelbaum said was mailed on July 5th, several hours after the service on him of the Governor's proclamation and the executive orders—did you sign one of those letters?

A. No, sir, I did not.

Q. Do you know whether or not the statement in the first paragraph of that letter—do you know whether this is true—where it is stated: "The officers of my union have conveyed your request to me and all other members of the union to go back to work"?

A. That is true.

Q. Do you know that the officers then of the union had told the members of the union that Mr. Rogers had ordered or requested them to go back to work?

A. Yes.

Q. You were present when that information was conveyed to the members of the union, were you?

A. Yes.

Q. Who told it to them?

A. I think the report was made to Mr. Appelbaum.

Q. Mr. LaVelle, is it true or is it not true that when this card—Exhibit 9—a photostatic copy of it, but it was on a sort of colored or orange colored paper—you sat behind Mr. Levin at the counsel table yesterday, didn't you?

A. Yes.

Q. Didn't he hand you this report during court proceedings yesterday and say, "Take care of it"?

A. No, he did not.

Mr. Ely: That's all.

Redirect examination.

By Mr. Levin:

Q. There is no mystery about it. I handed it to Mr. Brengle, who is sitting here.

The Court: Any further questions?

Mr. Ely: And said, "Take care of it."

[fol. 229] Mr. Levin: Yes.

Mr. Ely: I have no further questions.

(10-minute recess.)

GREGORY E. BRENGLE, being sworn, testified:

Direct examination.

By Mr. Levin:

Q. Please state your name?

A. Gregory E. Brengle.

Q. Where do you live?

A. Ferguson, Missouri.

Q. By whom are you employed?

A. Laclede Gas Company.

Q. For how long were you employed by the Laclede Gas Company?

A. Twenty-three years.

Q. In what department are you working?

A. Service and installation department.

Q. Are you a member of any labor organization?

A. Yes, sir, Local 8-6 Oil, Chemical and Atomic Workers of America.

Q. Are you a member of the negotiating committee of Local 8-6 attempting to negotiate a contract with Laclede Gas Company?

A. Yes.

Q. Were you in the courtroom during the entire time while Mr. LaVelle was testifying?

A. I was.

Q. Did you hear the questions propounded to him about the notices given to the company of the termination of the contract?

A. Yes, sir.

Q. And the notices given the Conciliation Service and to the State Board of Mediation, about the dispute?

A. Yes.

Q. And about the course of negotiations, first with the company and then under the auspices of the United States Conciliation and Mediation Service?

A. Yes, sir.

Q. Did you hear the answers that Mr. LaVelle gave to those questions?

A. Yes, sir.

[fol. 230] Mr. Levin: May it be stipulated that if Mr. Brengle were to be asked the questions that were propounded to Mr. LaVelle—

Mr. Ely: You better ask him.

By Mr. Levin:

Q. If those same questions were propounded to you as were to Mr. LaVelle would your answers be the same, or substantially the same?

Mr. Ely: I will stipulate he would so testify on those matters.

The Court: All right.

Mr. Levin: It may be so stipulated.

Q. You have been a member of the negotiating committee and personally acquainted yourself with all the details, have you?

A. Yes.

Q. On the matter of emergency crews and their activity, have they been under your direct jurisdiction and supervision?

A. Yes, sir.

Q. Will you state what department you were employed in while the company was operating normally?

A. Service and installation department.

Q. Is it in the Service and Installation department where emergency calls are taken care of?

A. Yes.

Q. Can you state to the Court what is the normal complement of an emergency crew—how many men and who are they?

A. Well, under the normal operations of the company they have a certain group of people that are always assigned to emergency calls, such as leaks and explosions.

Q. What makes up any one crew?

A. One man.

Q. Just one man?

A. Yes, sir.

Q. Over week ends and holidays there are four-men crews, are there not?

A. That is a street leak crew.

Q. What is that?

A. A crew made up of four men.

Q. Who are the four as a rule?

A. You mean our—

Q. Not by name, but you have a foreman among the four?

A. Yes, sir, a leak foreman and three workers.

[fol. 231] Q. Has the union set up any emergency leak crews for the strike?

A. Yes, sir, they have.

Q. Were you present when this subject came up with Mr. Ramsey of the Laclede Gas Company?

A. I was.

Q. Will you tell the Court what was said on that occasion and what you heard?

A. At approximately midnight June 30th Mr. Ramsey asked a question of the negotiating committee if that included or set up any emergency crews, and our answer

was, "Yes, we will set up emergency crews and answer emergency calls from our union office."

Q. What did Mr. Ramsey have to say about that?

A. Nothing.

Q. Were the crews set up immediately?

A. Yes.

Q. Have the crews been on duty ever since?

A. Twenty-four hours.

Q. Will you state the number of men who have been available in those crews during various shifts and schedules?

A. In the street leak crews there is sixteen men available on an 8-hour shift, and that is plus one supervisor, making seventeen.

Q. Do you have anyone on hand during the hours from midnight to the next morning?

A. Yes, sir.

Q. How many men would that be?

A. That is four men on the street leak crew and eight on service calls, plus a group of people on standby at their homes and we can get in touch with them, we have their telephone numbers.

Q. Do you receive regular reports from the emergency crews concerning calls that have come into the office?

A. We do.

Q. Has the union emergency crew responded to all emergency calls?

A. Every call that has come to our union office we have responded.

Q. Can you estimate to the Court the approximate number of those calls?

A. Approximately 150.

[fol. 232] Q. Has the police department been furnished with emergency numbers—the St. Louis Metropolitan Police Department?

A. They have.

Q. Has the St. Louis County Police Department been furnished with the numbers?

A. They have.

Q. Have the various constables and police officers of the different municipalities in St. Louis County been given the number?

A. Yes, sir.

Q. Has the Metropolitan St. Louis Sewer District been furnished the number?

A. They have.

Q. Has the St. Louis Fire Department been furnished the number?

A. Yes, sir.

Q. What about the community fire departments and the other various fire departments in St. Louis County?

A. They have all been furnished the numbers.

Q. Have you had your office receive emergency calls from city and county alike?

A. We have.

Q. Have the police in the City of St. Louis called on occasion?

A. Yes, sir.

Q. Has the Fire Department of the City of St. Louis called on occasions?

A. Yes, sir.

Q. Has the St. Louis County Police Department called on occasions?

A. Yes, sir.

Q. And the fire departments of various municipalities in St. Louis County?

A. That's correct.

Q. Have private individuals also called these numbers?

A. Yes.

Q. Have the dispatchers at Laclede Gas Company even now on duty called in emergency?

A. Yes.

Q. Will you give us the circumstances of those calls.

A. They call one of these numbers and give one of our dispatchers in the union office different type complaints.

Q. In other words, the dispatchers still working for Laclede at Forest Park receive calls, and in turn call your emergency number and give your people the details of the complaint?

A. At times.

[fol. 233] Q. This occurred, did it, since the inception of the strike?

A. Yes.

Q. You have no way of controlling what calls they refer to your office, do you?

A. No, we don't.

Q. But the ones that Laclede dispatchers have sent in have been emergency calls, is that right?

Mr. Welborn: I object to the continual use of the words "emergency calls."

Mr. Levin: Withdraw it.

Q. About how many such calls have been referred to the emergency numbers by Laclede's dispatchers, if you know?

A. That would be pretty hard for me to answer correctly.

Q. Can you give us your best guess on what you were told?

A. I would say between 10 and 15.

Q. Do you have some records of some of the more recent calls attended to by your emergency crews?

A. Yes, sir.

Q. Will you state to the Court some of those, and the dates and the details and from whom the calls were received?

A. This would be repetitious.

The Court: Are those different than Mr. LaVelle—

Mr. Levin: Some were testified to by Mr. LaVelle.

Q. Yesterday you were handed Plaintiff's Exhibit 9, were you not?

A. I was.

Q. Did you cause an investigation to be made of Dr. Jue's call?

A. I certainly did.

Q. In the regular course of your supervising the emergency crews, what did you examine on this particular situation?

A. When our crew went out there they found the meter and service stopped due to water in line. Our crew shut the meter off and instructed Dr. Jue we would check if any means could be found to restore service as soon as possible. Dr. Jue states he has an electric hot plate and sterilizer he is using for professional purposes.

Q. Do you know of any other complaint or statement of [fol. 234] lack of service to any doctor or professional man?

A. Only the one that was reported by Mr. LaVelle.

Q. Which involved a breach of contract by a furnace installer?

A. Yes, sir.

Q. The public press carried some accounts of a flame flickering on an instrument at Barnes Hospital. Are you familiar with that?

A. We had no complaint from Barnes Hospital.

Q. Was a check made to determine if they had a complaint?

A. Yes.

Q. What did Barnes Hospital report to the people under your supervision?

A. They had no complaint.

Mr Levin: Your witness.

Cross examination.

By Mr. Welborn:

Q. Mr. Brengle, maybe I misunderstood your testimony, but I thought you testified that the union crews had responded to every call received?

A. You heard me incorrectly.

Q. What did you say in that respect?

A. I said we responded to all emergency calls that we received.

Q. How many calls have you received?

A. Emergency?

Q. No—calls of all nature, from customers of Laclede Gas Company and others regarding gas service—have been received since the 1st of July?

A. Mr. Welborn, we never kept a record of all those calls, because we have dispatchers there to work as dispatchers for Laclede Gas Company every day, and we can also tell whether a whole block is out of gas and whether it is well worth while going out to answer complaints, because we don't have that type of material to get water out of the main.

Q. I will ask you again: How many calls have been received since July 1st at union headquarters regarding complaints of customers?

A. I have no idea.

Q. There were a large number, more than 150 weren't there?

A. Yes.

[fol. 235] Q. There were as many as a thousand, weren't there?

A. I have no idea.

Q. But you know there was a large number, more than 150?

A. Yes.

Q. You said you answered all calls that were emergency calls, is that right?

A. That we could determine were emergency.

Q. Who determined whether or not they were emergency?

A. Our experienced dispatchers.

Q. What were the standards which they used?

A. The same standards used in our everyday work at Laclede Gas Company.

Q. What are the standards used?

A. That I wouldn't be able to answer.

Q. You don't know?

A. I am not a dispatcher.

Q. You don't know he uses the same standards then, do you?

A. Yes, I do.

Q. How do you know that, because you don't know those standards?

A. He is operating the same as he does for Laclede Gas Company, on the eight-hour shift.

Q. If you don't know how he operates for Laclede Gas Company how would you know whether he is operating the same?

A. He is acting under a supervisor, same as he does with Laclede Gas Company.

Q. You stated yesterday you received for the first time his call from Dr. Jue. Is that correct—I mean the information about the complaint of Dr. Jue?

A. That is correct.

Q. That was handed you by Mr. Levin yesterday; after the exhibit had been introduced in evidence, is that right?

A. That is correct.

Q. I will show you this document, marked Plaintiff's Exhibit 8, Mr. Brengle, and ask you if that complaint was called to your attention yesterday here (handing document to the witness)?

A. No.

Q. Did Mr. Levin ask you to inquire about this woman who had no gas to bathe a baby and couldn't make the formula for her baby?

A. No.

[fol. 236] Q. Do you consider that an emergency?

A. The only way that could be determined is knowing the conditions in that particular neighborhood.

Q. You made no effort, when evidence of these complaints was introduced yesterday, to verify whether they were emergency or not, did you?

A. I didn't have that information.

Q. Did you see these reports which were introduced in evidence?

A. I can't hardly read them.

Q. I asked whether you saw them?

A. Some of them.

Q. Did you see Plaintiff's Exhibit 8?

A. No.

Q. Which ones did you see?

A. Hand those here.

(Counsel hands documents to the witness.) Those two (indicating).

Q. You saw the reports which were marked Plaintiff's Exhibit 9 and Plaintiff's Exhibit 11, is that correct?

A. That is correct.

Q. You didn't see those marked Plaintiff's Exhibits 12, 13, 6, 7 and 8, is that correct?

A. I did not.

Q. Plaintiff's Exhibit 11 is the complaint about the explosion of a gas range, is that correct?

A. That is correct.

Q. Had that complaint previously been reported to the union?

A. No, sir.

Q. That is July 6, 1956.

A. The first information we received on that one was yesterday, when Mr. Levin handed me that ticket. We immediately dispatched a crew there, and here is the information we received from the party involved: "Mrs. Moore stated there was no explosion at range. A small leak in her pipes ignited. The fire department was called and they put it out. She at no time ever contacted Laclede Gas Company." That is the statement from Mrs. Moore.

Q. You didn't have any information about this incident until July 12th, is that correct?

A. That is correct.

Q. If this complaint here, which is dated July 2, 1956, from Charles Green about a daughter who was brought [fol. 237] home from the hospital—if that complaint had been referred to the union what would the union have done about that?

A. Like I answered before, if we could determine from the amount of complaints from that particular neighborhood whether we could do anything about it, we would have answered the call.

Q. In other words, you would not answer a call from an individual customer about hardship, or such other matters, is that correct?

Mr. Levin: I object to that. That wasn't his answer. Argumentative.

The Court: Sustained to the form.

Mr. Welborn: I am trying to ascertain what the standards are.

The Court: I understand. You may restate it.

By Mr. Welborn:

Q. How many calls has the union crew answered from individual customers complaining of the lack of gas service, Mr. Brengle?

A. I have answered that before by stating approximately 150.

Q. Were all those lack of service?

A. Mostly.

Q. Some of those you just testified about concerned fires in mains?

A. That's right.

Q. There were other causes which were not related to lack of service, is that correct?

A. That's correct.

Q. Of these 150 calls to which the crews responded, how many of them did they do anything?

A. Out of the 150 I will say they done something on 150 calls.

Q. Did they make the repairs on 150?

A. If there was any repairs necessary they did.

Q. What did they do?

A. They made any necessary repairs.

Q. Did they repair mains?

A. If they could.

Q. Well, if they could—they can't repair all mains, is that correct?

A. That is correct.

Q. The union crews are not in position to repair all main breaks?

A. That is correct—not all main breaks.

[fol. 238] Q. Have you repaired any main breaks?

A. I don't think we have had any main breaks.

Q. You haven't repaired any then?

A. No.

Mr. Levin: That is an assumption. There has been no evidence there have been any main breaks.

The Court: Overruled.

Mr. Welborn: I will withdraw it.

Q. Have the union crews done anything about water in the mains?

A. No, sir.

Q. You are not in position to do anything about water in the mains, is that correct?

A. That is correct.

Mr. Welborn: That's all.

Redirect examination.

By Mr. Levin:

Q. Mr. Brengle, Laclede Gas Company and its people did not bring to your attention, did they, the condition set out in Plaintiff's Exhibit 8 (handing document to the witness)?

A. They did not.

Q. And the customer didn't call your office, did she?

A. Not to my knowledge.

Q. Will you look at the address on the top there of Exhibit 8—"Bissell Hills"—that is a complete failure in that whole area, isn't it?

A. That is correct.

Q. So over that particular area the entire subdivision is without gas, isn't that right?

A. That is correct.

Q. Did anyone call to your attention the condition set out in Plaintiff's Exhibit 11 before yesterday (handing document to the witness)?

A. No, sir.

Q. When did it come to your attention the union might do something about it?

A. We immediately dispatched a crew there.

Q. And did you determine that Laclede's Exhibit 11 was in gross error on the facts?

A. We certainly did.

Mr. Welborn: I object to that.

The Court: Sustained to the form.

By Mr. Levin:

Q. Did you determine whether Plaintiff's Exhibit 11 [fol. 239] correctly set out the facts?

A. As I read this complaint ticket, it states that: "Gas range exploded. Police Dept. turned gas off in street. Instructed customer to engage a plumber." And somebody—there is a number on the ticket. From our determination, this customer was never in contact with Laclede Gas Company.

Q. Was there an explosion in the gas range?

A. There was no explosion.

Q. A minor fire, which the fire department put out?

Mr. Welborn: I object to that question.

The Court: Sustained.

Mr. Levin: Withdraw it.

Q. What did happen, Mr. Brengle?

Mr. Welborn: I object to any further testimony from a witness who has no knowledge.

Mr. Levin: That's all.

Recross examination.

By Mr. Welborn:

Q. You said the complaint which appears on Plaintiff's Exhibit 8 is from Bissell Hills, is that correct?

A. That is what the ticket states.

Q. Bissell Hills is a subdivision in which the entire area has been deprived of gas, is that correct?

A. The way I heard testimony in this court.

Q. The union crew is not able to restore gas to the Bissell Hills area, is that correct?

A. That is correct.

Mr. Welborn: That's all.

Mr. Levin: May it be stipulated by counsel for the parties that if Kenny J. Finnerty were summoned and were to testify he would state that he is the President of Local 8-194 and a member of the negotiating committee; that Local 194 has filed with the National Labor Relations Board the same type of documents and instruments about which Mr. William LaVelle has testified were filed by Local 8-6, namely, the non-Communist affidavits, the [fol. 240] annual registration with the Bureau of Labor Standards Department of Labor; the annual financial information; the posting of the financial information for the membership; the affidavit for officers; and that the National Labor Relations Board has currently issued its certificate of compliance to Local 194; and that said Local 194 has had such certificate of compliance in all the years since the passage of the Labor-Management Relations Act, 1947.

Mr. Ely: That may be stipulated.

Mr. Levin: That Mr. Finnerty would further testify that Defendants' Exhibit H is the most recent contract between his Local Union and Laclede Gas Company; that if he were interrogated concerning the notices given to the Laclede Gas Company on or about March 27th of changes desired in the contract, and to the United States Mediation and Conciliation Service of the existence of a dispute, and to the Missouri State Board of Mediation regarding the existence of a dispute, he would testify substantially as did Mr. LaVelle—that such notices had been given for and on behalf of his union.

Mr. Ely: It is agreed he would so testify.

Mr. Levin: That if interrogated concerning the course of collective bargaining negotiations between the committee representing Locals 8-6, 8-194 and 8-109; he would testify that he has at all times been a member of the negotiating committee; that he participated in all the negotiations; that if the same questions were propounded to him as were propounded to Mr. LaVelle regarding the matters in dispute, the course of negotiations, the participation of U. S. Conciliation Service; as to the times and places of their meetings; he would testify substantially the same to the questions as did Mr. LaVelle.

Mr. Ely: It may be so stipulated.

Mr. Levin: We will not need Mr. Finnerty. Our next witness will be a very long witness.

The Court: How long?

[fol. 241] Mr. Levin: I think an hour on direct.

The Court: (After discussion) You are willing to agree this matter may be submitted on the merits?

Mr. Levin: Yes, your Honor.

The Court: All right, in accordance with your request, we will recess until two o'clock. Will you gentlemen please get the exhibits up to this point together for me? I would like to look at them over the noon hour.

Thereupon a recess was taken until 2:00 o'clock p. m., at which time the trial was resumed and further proceedings had as follows:

DANIEL C. ROGERS, being sworn, testified:

Direct examination.

By Mr. Levin:

Q. Please state your name?
A. Daniel C. Rogers.

Mr. Levin: May it be noted for the record that Mr. Rogers, who has been subpoenaed as a witness for the defendants, may be deemed to be a hostile witness and therefore available for cross-examination by counsel for the defendants?

The Court: That may not be deemed. I don't know whether he is or not.

Mr. Levin: Inasmuch as the pleadings do indicate that the suit was brought pursuant to certain actions that were taken in which Mr. Rogers was acting as an agent for the Governor of the State of Missouri in carrying out—

The Court: I don't know that in and of itself makes it—

By Mr. Levin:

Q. Where do you live?
A. Fayette, Missouri.
Q. You are a lawyer?
A. Yes, sir.
Q. Do you have any official position in the State of Missouri?
A. Yes, sir.
[fol. 242] Q. What is that position?
A. I am Chairman of the State Board of Mediation.
Q. For how long have you occupied that position?
A. Since about March 15, 1951.
Q. You are serving in a term that has some time yet to run, is that correct?
A. Yes, sir.
Q. Mr. Rogers, is that state commission set up under what is known popularly as the King-Thompson Law of the State of Missouri?
A. Yes, sir.

Q. That is Chapter 295 of the Revised Statutes Missouri, 1949, is that correct?

A. Yes, sir.

Q. Did you occupy that position during the months of March, April, May, and all the other months up to date in 1956?

A. Yes, sir.

Q. In that capacity, Mr. Rogers, are you in position to state whether the State Board of Mediation received from Locals 8-6, 8-194 and 8-109 of the Oil, Chemical and Atomic Workers International Union, notices of the existence of a labor dispute with Laclede Gas Company?

A. Yes, sir.

Q. Such notices were timely received, were they not?

A. Yes, sir.

Q. Were they received by you in accordance with the requirements of Section 295 of the Revised Statutes Mo. 1949?

A. As I understand them.

Q. Did you then acknowledge receipt of those notices?

A. I did.

Q. Subsequent to receipt of these notices from the respective unions were you also notified by Laclede Gas of the existence of such dispute?

A. I don't know whether Laclede filed any notice of changes that they desired in their contract. If they did they are required to file them also.

Q. Did you send acknowledgments to the Local Unions 8-6, 8-109 and 8-194 of receipt of those notices?

A. I did. I understand you have it in the record. I haven't seen it.

[fol. 243] Q. Did you notify any of those unions that they had in any way failed to comply with the requirements of Chapter 295, R. S. Mo. 1949?

A. No, I have not.

Q. So far as you know, they have complied with this Chapter?

A. So far as I am interested in their dispute, yes.

Q. Did you then do anything further with respect to the dispute between these locals and Laclede Gas Company?

A. No. I have not done anything to participate in any of their negotiations. There have been a sequence of events since they notified me approximately sixty days before June 30th.

Q. Isn't it true that the first time you met with any of the principals involved in the dispute was on Tuesday, July 2, 1956—I am sorry—that would be Tuesday, July 3rd.

A. May I refer to my notes here?

Q. Yes. Let me add to the question—that is in addition to the written notices which are already in evidence.

A. Yes, that is correct. I believe it was on July One I sent the parties on both sides a telegram, requesting them to meet me at the Jefferson Hotel the next day—July 3rd, was it?

Q. Yes.

A. That was, as you have indicated, the first time I had personally met any of the parties.

Q. Did Locals 8-6, 8-109 and 8-194 send representatives to that session called by you at Hotel Jefferson for the morning of July 3rd?

A. Well, Mr. Appelbaum, Mr. Wynn and Mr. Bickel were there; and I am sure they were sent by these three locals.

Q. They announced, did they not, that they were representatives of the Oil, Chemical and Atomic Workers Union?

A. I think they did. But there was no doubt in my mind what they were, and I received them as such.

Q. Representatives of the Laclede Gas were also present, were they?

A. Yes, Mr. Ramsey, Mr. Leonard and Mr. Klink, and I think a fourth person, representing the company.

[fol. 244] Q. All the persons you named appeared at the place at the time earlier set by you, is that correct?

A. Yes, according to my request.

Q. Isn't it true, Mr. Rogers, that what happened on that occasion was that the representatives of the unions advised you that their presence was at your request, but was not to be construed as a waiver of their questioning the constitutionality of King-Thompson?

A. I don't remember them stating that, but I always concede that.

Q. You understood that was their position?

A. Certainly.

Q. Did they not also tell you on that occasion that they had, prior to the receipt of your notification, arranged a further negotiating conference under the auspices of the United States Conciliation and Mediation Service?

A. Not for that date. As a matter of fact; before I arranged for the meeting I contacted Mr. Hale and asked him if he had anything set up for that date, and he said no, that there was no arrangements made for meeting with the union as of that time. I told him I was going to request them to come up to the Jefferson; that I wished to talk with them on some phases concerning the applicability of the King-Thompson Act to the strike that was then in progress. He said that would be no interference with any plans they had at that time.

Mr. Ely: Identify Mr. Hale, please.

The Witness: He is one of the Commissioners of the Federal Mediation and Conciliation Service. And, moreover, I sent a similar telegram to Mr. Hale, invited Mr. Hale and Mr. Sheehan to attend the meeting, and expressed the hope they would be there.

By Mr. Levin:

Q. Mr. Hale and Mr. Sheehan didn't attend the meeting?

A. They did not.

Q. Did they offer any explanation why they didn't attend?

A. No, they never offered any to me. I think the matter, in a conversation later with Mr. Hale—he—

[fol. 245] Mr. Ely: That answers the question. I object to anything else.

By Mr. Levin:

Q. Is it true then that the representatives of the union said that they had been conducting negotiations for a long period of time under the auspices of the U. S. Conciliation Service with Laclede Gas Company?

A. Well, I was aware of the fact that they had been in negotiations with Federal Mediation and Conciliation Ser-

vice. I don't know that anyone expressed to me that they had been for a long time—there had been negotiations for a month or more.

Q. Wasn't it represented by some of the union representatives on that occasion, "We are continuing negotiations under the auspices of the U. S. Conciliation"?

A. Yes, that is correct.

Q. Didn't you then, on that occasion, say to them that was quite acceptable to you, and they should go ahead?

A. Absolutely, yes. I told them I had no intentions whatsoever of interfering with the negotiations that were in progress with the Federal Conciliators; that they had always cooperated fully with the Federal Conciliators, as proposed in the Taft-Hartley Act; and that in those cases where there was a union that didn't want any assistance under the King-Thompson Act I was very careful to stay away. That was my position in this case.

Q. Thereupon the meeting broke up, is that right?

A. There was some other things exchanged back and forth between us on the matter, that is true. I explained to them the purpose of my calling them there. That they were in a strike. I told them they had discontinued service to a public utility, and under the Public Service Commission Law I felt that they, as well as the company, were obliged to render continuous and safe service to the public; and that if they continued the strike service would rapidly break down and the public health, interest and welfare would be jeopardized, and Governor Donnelly would be confronted with a duty under the seizure provisions of the [fol. 246] act, and I hoped they would return to work, and not meet the necessity of the Governor making such a decision.

Q. You did tell them at the meeting of July 3rd that they were in violation of Chapter 295, Revised Statutes Missouri?

A. No, I didn't tell them they were in violation.

Q. Didn't you just testify to that?

A. No. As a matter of fact, they are not in violation until the Governor seizes. No strike is an illegal strike until the event of seizure by the Governor.

Q. Did you tell the union that the strike was illegal in so far as it interfered with the service of the utility?

A. I told them it was a violation of their obligation under the Public Service Commission Law to break down the service of a public utility, but I didn't tell them there was any violation of the King-Thompson Act. Essentially there is no violation of the King-Thompson Act by a strike until the public health and welfare has been jeopardized and the Governor has so found. It is only after that time that a strike becomes an illegal strike.

Q. Those were your interpretations of the law given to them in your official capacity as Chairman of the State Board of Mediation?

A. Yes.

Q. This was not Daniel C. Rogers, lawyer, talking, but Daniel C. Rogers, Chairman of the State Board of Mediation, is that correct?

A. Yes, sir.

Q. These were, so far as you were concerned, official interpretations of the meaning of the act?

A. They were my interpretation, from six years of having administered the act as Chairman, yes.

Q. After this exchange of words the meeting adjourned, did it not?

A. Yes, sir.

Q. It adjourned on a mutually amiable note?

A. So far as I am concerned, yes.

Q. You all shook hands and everybody left?

A. Yes, sir.

[fol. 247] Q. Nobody walked out on any meetings, did they?

A. I didn't construe the adjournment as a walk-out.

Q. That was the last meeting of the parties that you had called, is that right?

A. That is correct.

Q. From that date, July 3rd, to the present moment, you have not made any further move of calling the parties together?

A. That is correct.

Q. On July 5, 1956, did any event occur in which you were involved relating to the Laclede Gas Company?

A. Well, I will be glad if you will help me on the dates. Was that the date the Governor sent the proclamation and the two executive orders down here?

Q. Yes.

A. Yes, the Governor sent those to me by Patrolman Wallace of the State Highway Department.

Q. You are referring to the originals of Plaintiff's Exhibits 1, 2, and 5?

Q. Yes. I am confident they are the proclamation and Executive Orders 1 and 2.

Q. When were these received by you?

A. Oh, roughly, three o'clock in the afternoon.

Q. You waited a period of time that afternoon, did you, before doing anything with them?

A. I waited until Acting Chief of Police Casey came over to my office to go with the patrolman and me to the company office.

Q. Were these served later in the day on the officers of Locals 8-6, 8-194 and 8-109?

A. If I would be correct in my opinion of a correct answer, I would say they were delivered. I don't recall service of the papers, necessarily, but they were delivered.

Q. I will accept that qualification. They were delivered at Grand and Franklin, were they?

A. Yes, in the office of the Chairman of the Board, I presume—Mr. Otto—and President Derrick was there.

Q. I think you didn't understand. They were delivered to the union at Grand and Franklin, were they?

A. Yes. I took them down. After the meeting at the company I went downstairs, got in the car with the officers. And, in view of testimony that has been stated, I will state [fol. 248] it this way: We thought that the union then were in conciliation conferences with the Federal men, and we decided that nevertheless we would just drive out to the office and deliver them to whoever was present. So I remained in the car and the men went upstairs and in a few moments came back and said, "fortunately we found all the defendants and delivered copies to each of them."

Q. With that you left with the trooper?

A. Yes, we drove back and they let me out at the Jefferson Hotel.

Q. Executive Order No. 2 reads—skipping the "Whereas" and Paragraphs 1, 2, 3, 4, and the second "Whereas"—"That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is hereby authorized and directed to take possession of the plants," et cetera, et cetera, as the order reads. You understood, of course, that you were acting as the agent of the Governor under the seizure, is that right?

A. Yes.

Q. From that time on you have performed your duties as the agent of the Governor in implementing the carrying out of Executive Orders 1 and 2, issued pursuant to the Proclamation identified as Plaintiff's Exhibit 1?

A. Well, within the scope of what the Governor and I understand is my duties.

Q. I am saying as the agent of the Governor?

A. Yes.

Q. Designated here?

A. Yes. So limited, as I have stated.

Q. Let's review that again. You are acting as the agent who has been designated in Executive Order No. 2, which has never been modified or altered?

A. That's right.

Q. Executive Order 2 as issued designating you as agent of the Governor is the only statement under which you have exercised your rights, powers, duties and authorities—and, of course, taken advantage of whatever immunities and privileges you have—isn't that correct?

A. That's right.

[fol. 249] Q. That afternoon were you in contact, after the service of the paper, with Television Station KSD-TV of the Pulitzer Publishing Company outlet in St. Louis?

A. Yes.

Q. That was about 5:30 that afternoon, was it not?

A. No.

Q. What time?

A. I would say it was about approximately ten o'clock that night.

Q. Central Time or Daylight?

A. Our time here in St. Louis. Approximately that. KSD called me at my room and said, "We have a long letter here

addressed to you from the union. We understand that two thousand copies of which have been mailed to you. If you would, we would be glad for you to come over and appear on our telecast at eleven o'clock and answer this letter." I said, "I would like to see the letter first." They said, "Well, we think you have almost answered all the questions, and it won't be difficult, but you come over and we will let you see the letter." I went over and read the letter and said, "Yes, I will go on at eleven o'clock." I excused myself for a little walk and went back at eleven.

Q. You were then in touch with the station and you agreed to come?

A. Under the circumstances I have just described, yes.

Q. You appeared there as the agent of Governor Phil M. Donnelly pursuant to Executive Order No. 2, is that right?

A. Well, yes, for the seizure was on at that time. What date it is I appeared there.

Q. You were actually introduced as the agent of Governor Donnelly who had been designated to take charge of and operate the utility, weren't you?

A. I am trying to keep my dates straight. Was the letter answered during seizure, or was seizure on at that time?

Q. I think you just testified those were served in the afternoon. I have reference to Plaintiff's Exhibits 1, 2 and 3.

A. All right.

Q. And that this telecast request, or telecast, was at ten o'clock, four hours or five hours later that day?

[fol. 250] A. The answer is yes, I was acting as the Governor's agent and the Chairman of the State Board of Mediation when I appeared on that telecast.

Q. You heard the rebroadcast here in the courtroom yesterday, did you not?

A. Yes, sir.

Q. Those questions were read to you as appeared in the rebroadcast, and the answers by you as was heard in the rebroadcast, isn't that correct?

A. That is correct. There is this point about the letter—

Q. I will ask you more. That was all I want to know. Those answers were as you have given them?

A. Yes. But I pointed out that the letter stated I had

ordered the men back to work. I have never ordered the men back to work.

Q. The question, as I say, is you have answered the questions as appeared yesterday?

A. Yes. I listened carefully, and I wouldn't change a word of it.

Q. In one question that was not on the record, after the questions were all answered—one of the announcer's questions—didn't you state: "I have not received these letters yet, but when I do I shall answer them all. I shall answer them individually"?

A. Yes, I stated that. And I haven't received the letters yet. They didn't address them to me at any place I was doing business. They addressed them to Laclede office. And two or three days later someone at Laclede called me and told me they had two mail sacks full of letters there for me.

Q. You saw the letter, or heard the letter read to you on the evening of July 5th—all the questions, and the answers you gave, and you saw personally the form of the letter, didn't you?

A. Oh, yes, I was given a copy by KSD. But I am explaining to you I haven't had the two thousand letters in my hands yet. I haven't had time to have them.

Q. You knew then they were all addressed to you at 1017 Olive, did you not?

A. No, I didn't, at the time I appeared on the telecast. I learned that when someone at Laclede called me and told me they were over there.

[fol. 251] Q. I thought you just finished saying that KSD-TV showed you the letter?

A. They did.

Q. It was a mimeographed letter, was it not?

A. That is correct.

Q. And it was the counterpart, was it not, of what has been marked for identification as Defendants' Exhibit J (handing document to the witness)?

A. That is correct.

Q. How is that addressed?

A. Well, it is addressed to me at 1017 Olive Street, but I didn't pay any attention to where it was addressed that

night. I am not denying that I got the letter at 1017 Olive Street. And when I get them I will answer the letters. I went on the radio, and that was the quickest way to answer them. I can't answer any differently than I did in the telecast you heard yesterday. KSD agreed they would have a tape recording of it and rebroadcast it to give it the fullest publicity.

Q. You asked them to rebroadcast it to give it the fullest publicity?

A. No, I didn't ask them. They told me that is what they intended to do.

Q. You agreed?

A. Yes, I agreed that would be a good thing to do.

Q. So, as you have testified, these are still your answers to the questions, Mr. Rogers, as the Governor's agent in charge?

A. Why, certainly.

Q. It is therefore your position, Mr. Rogers, now, and was then, that the 2200 striking employes of Laclede Gas Company are working for the Laclede Gas Company—they are not employes of the State of Missouri—is that right?

A. Under the facts set out in that letter, yes.

Q. Again referring you to the answers to the seven questions—the employes are still employes of the Laclede Gas Company—that is still your position as agent?

A. Yes, sir.

Q. As agent of the Governor in the seizure your answer to the fourth question remains the same: "Since the employes remain the employes of the Laclede Gas Company, why, of course, the state has no responsibility for those things mentioned in there." That had reference to the [fol. 252] question asked about Workmen's Compensation coverage under the Unemployment Act and under the Social Security Act: "the state has no responsibility for those things mentioned in there and the Laclede Gas Company is responsible to each of the employes for all benefits, just as it has been in years heretofore." That is correct?

A. Yes, sir.

Q. Your answer to the fifth question—

The Court: There is no use going through that. He said those are his answers.

By Mr. Levin:

Q. Mr. Rogers, therefore no employe of Laclede Gas Company on strike is your employe, is that correct?

A. That might be a question of law, but that is my opinion. I haven't been instructed to the contrary.

Q. But as agent for the Governor that is your opinion?

A. I certainly am not exercising any master and servant relation to them.

Q. By the "master and servant relation" you mean to say they are not and will not be your employes, isn't that right?

A. Yes.

Q. That they will or will not?

A. They will not.

Q. And that under your interpretation of it they will not be working for any of the political subdivisions of the State of Missouri?

A. As employes expecting to receive their pay and Social Security benefits and other such things the answer is, as I understand it, they will not be employes of the state at any time during seizure.

Q. Or of any political subdivision of the state?

A. Well, yes. I don't know anything about any political subdivision. The answer is yes.

Q. Again, you mean they would not be employed by any political subdivision of the State of Missouri, is that correct?

A. Yes.

Q. They would or would not?

A. They would not.

Mr. Levin: Thank you.

The Witness: I don't know what political subdivision you mean other than the state itself. Certainly not the County of St. Louis.

[fol. 253] Q. Do you understand the meaning of the Labor Relations Act of 1947, and the exclusions from the coverage of the Act?

A. Yes.

Q. You know the National Labor Relations Act ex-

cludes specific employes of the state or a political subdivision?

A. Yes.

Q. That, so far as you are concerned, none of the Laclede Gas workers were or would be employes of the State of Missouri, or of any political subdivision thereof?

A. So far as my administrative authority up to this time, the answer is yes, they would not be.

Q. You still state that the employes of Laclede are required to continue to render services to Laclede Gas Company?

A. Yes. First, under the Public Service Commission Act, I think they are in violation of it, because the company can't render continuous and full service without its employes, and they are both required to perform that public service. Again, I think they are in violation by the fact of seizure under the King-Thompson Act.

Q. Isn't this true, that in this part of the broadcast that wasn't carried over on the record this much was contained and was caught by the reporter—you said—the last answer: "Mr. Hille: Sir, is there any further action to be taken if the employes decide to continue the strike, now the seizure is complete, is that right?" Your answer: "I am always unwilling to engage in any statements that anyone would justifiably think of as threats, but, after all, you have asked the question and many people want to know the answer to this question. Now, the point is this: as of 4 o'clock today, Central Standard Time, 5 o'clock your time, the proclamation and executive orders went into effect and from that time on the employes are in violation of the law which provides that it shall be unlawful if, after seizure, they engage in strikes. So they are in violation of the law as of this time. Now then, we like to be [fol. 254] kind and considerate in the enforcement of an Act, but the answer to the question is this: the employes, when the time arrives of a showing of resistance to the law, forfeit their seniority." You said that?

A. Yes.

Q. Now, didn't you also say the following: "Many of these employes have twenty-five years or more of seniority, and that will be forfeited if they continue on strike," or words to that effect?

A. Let's straighten out those words. I said many of these employes have twenty-five years and more of seniority, and it would be most unfortunate for them to lose their seniority rights.

Q. Right before that you say that they forfeit their seniority.

A. The law says no employe shall be re-employed except as a new employe. Maybe it would be better if I had quoted the law, rather than to say "forfeit".

Q. You did say "forfeit"?

A. Yes, that is correct.

Q. And you meant it?

A. Yes, I think the law means that.

Q. You also added, in that same answer, that the unions representing these men would each be subject to forfeiture of ten thousand dollars a day, and that since there are three local unions involved that would mean thirty thousand dollars a day, and that there were five officers who were named and they would each be subject to a thousand dollars penalty, or forfeiture to, you said that also, didn't you?

A. No, I didn't say that.

Q. What did you say?

A. I was merely quoting the law. When he asked me about the consequences, I said, first, the employes forfeit their seniority rights, second, the union was subject to a fine of ten thousand dollars a day, and third, the officers are subject to one total fine of one thousand dollars each.

Q. Now, then, after you took over as the agent for Governor Donnelly and went to the company's office, you said you didn't get your mail there for three days? Where [fol. 255] were you during these three days?

A. At the hotel. I never was in the Laclede offices except that one time, and haven't been back since.

Q. You mean your seizure consisted of delivering this order?

A. I do.

Q. Who is collecting the receipts that are coming in daily to Laclede Gas?

A. The Laclede Gas Company is. Not the State of Missouri.

Q. Who is depositing the receipts coming in daily to Laclede Gas Company?

A. I have no information from it. All I can answer is the State of Missouri is not performing any of those acts of operating the Laclede Gas Company.

Q. Who is buying the natural gas that is coming in from the Mississippi River Fuel Company?

A. The State of Missouri is not.

Q. It is Laclede Gas Company so far as you know, is it not?

A. So far as I know.

Q. Who is incurring the credit for the purchase of all of the natural gas coming in from Mississippi Fuel?

A. The State of Missouri is not.

Q. So far as you know, it is the Laclede Gas Company?

A. So far as I know, yes.

Q. Does Daniel C. Rogers as agent of Phil M. Donnelly, Governor of the State of Missouri, have a bank account in which you deposit any proceeds or receipts from the Laclede operation?

A. The answer is no.

Q. Who is signing all vouchers, disbursement slips and checks, or any other evidences of debt, or authorization for payment of debt, for Laclede Gas Company?

A. I don't know. I am not.

Q. You know you are not?

A. Yes.

Q. Is anyone doing it for you?

A. No.

Q. Is anyone doing it, so far as you know, for Phil M. Donnelly, Governor of the State of Missouri?

A. I am quite certain they are not.

[fol. 256] Q. Do you have a Social Security number as an employer?

A. No, sir.

Q. Do you intend to apply for a Social Security number as an employer of any of the employes of Laclede Gas Company?

A. No, sir.

Q. Have you put up any signs, placards, banners, notices, or anything else, on the name-plate or other identification of Laclede Gas Company at any of its properties?

A. No, sir, I have not, and will not unless I am instructed differently than as I understand my duties at this time.

Q. Have any of the properties of Laclede, real, personal, choses in action, or any other kind, been conveyed, transferred or turned over to you in any way?

A. No, sir. In that connection, I might say to you what I said in the office of the President, while several of us were sitting around. Someone asked a question about the seizure. I laid my hand on—

Q. Excuse me, I don't think that is responsive to my question.

The Court: All right.

By Mr. Levin:

Q. Is Mr. Robert Otto, Chairman of the Board of Laclede Gas Company, still Chairman of the Board, fulfilling all of his functions as Chairman of the Board of Laclede Gas Company?

A. So far as I am concerned he is.

Q. He is not beholden to you, is he?

A. No, sir, except to keep the property of the Laclede Gas Company available for operation under the power as laid out in this proclamation and executive orders. And that is exactly what I told them in the office; and I told them that was the extent of my duties.

Q. Mr. Otto has not given you any reports?

A. No, sir.

Q. You didn't ask him to give you any reports?

A. No, I did not—not as long as the property is available for operation.

Q. Mr. Reid Derrick as President of Laclede is con- [fol. 257] tinuing as President of Laclede Gas Company to fulfill all of his duties and functions as President of Laclede Gas Company, is that right?

A. I certainly believe he is. He is as far as I am concerned.

Q. He has not given you any accounting, and you haven't asked him for any accounting, and you don't expect any accounting, is that correct?

A. That is correct.

Q. Mr. Allen Burgess, the Superintendent of Production of the Laclede Gas Company—the same questions, the same answers would be given, is that correct?

A. Yes. And all the rest of them.

Mr. Levin: That's all.

Cross examination.

By Mr. Ely:

Q. Mr. Rogers, I believe you stated that in answering the question in this letter identified as Defendants' Exhibit J, where you commented on the law, and your interpretation of the law, that was merely your conclusion and opinion?

A. That is my opinion.

Q. That is all it was?

A. Yes. I have no other instructions. Therefore I must administer the law as I see it.

Mr. Ely: That's all.

Mr. Levin: Nothing further. Your Honor please, that concludes the defendants' case.

The Court: Will there be any rebuttal?

Mr. Ely: No.

The Court: Where are we on the matter of pleadings?

Mr. Levin: I left with your Honor the original of the return.

The Court: Yes, I have it.

Mr. Levin: I gave a copy to Mr. Welborn and one to Mr. Ely, so the issues are joined—one, there is a complete answer to the petition and the order to show cause—it has all been combined in one.

The Court: That is the agreement you gentlemen made? [fol. 258] Mr. Levin: Yes. And we have a petition for a declaratory judgment, which was joined in as part of our responsive pleading, and which we in effect re-adopt all the allegations.

The Court: I have read it. That is in the nature of a cross-bill and requires some pleading on their part.

Mr. Welborn: I have been running out and completing the answer to that petition. I believe, if the Court will give me ten or fifteen minutes, I will have it.

The Court: I will give you whatever time you want.

(Short recess.)

In Circuit Court of the City of St. Louis

Defendants' Amended Return to Order to Show Cause, Answer and Petition for Declaratory Judgment—
Filed July 13, 1956

Now come the defendants herein, being all the defendants named in plaintiff's petition, and for their joint return to the Order to Show Cause herein why a temporary injunction should not be granted as prayed for in the petition and in answer to the allegations contained in the said petition, respectfully re-adopt all of the allegations appearing and contained in the "Return to Order to Show Cause and Motion to Dismiss" heretofore filed in these proceedings on July 11, 1956.

Wherefore, defendants pray for judgment in favor of the defendants, for their costs, for dismissal of the petition of plaintiff filed herein and for all further and proper orders.

Petition for Declaratory Judgment

1. Defendants re-adopt and incorporate herein by reference all the allegations contained in Paragraphs 1 through 17, inclusive, as hereinabove set out.

[fol. 259] 2. The defendants further state that for all the reasons set forth above and by reason thereof a continuing dispute exists affecting the defendants and each of them and all the members of the defendant Unions, and the defendants and each of them and all the members of the defendant Unions are and will continue to be adversely affected by the acts, conduct and things done, performed and threatened by said Phil M. Donnelly, as Governor of the State of Missouri as hereinabove set out, pursuant to and under the alleged authority of Chapter 295, R. S. Mo.,

1949. For the reasons set forth hereinabove a serious doubt exists concerning the validity, legality and constitutionality of Chapter 295 of the Revised Statutes of Missouri, 1949, and the various Sections thereof, under which the acts of said Phil M. Donnelly herein complained of have taken place and occurred.

3. Defendants further allege that said Phil M. Donnelly as Governor of the State of Missouri, threatens to continue to enforce all the provisions of Chapter 295, R. S. Mo., 1949, including, without limiting the generality thereof, Sections 295.180 and 295.200, to the detriment, loss and damage of all the defendants herein and each of them and all the members of the defendant Unions. As a result thereof, the defendants and all the members of the defendant Unions are uncertain and do not and cannot know what is the status of their employment or other status under the said law, nor the effects upon them, or any of them, of the acts, conduct and things done and performed by Phil M. Donnelly, as Governor of the State of Missouri, and the agents designated and appointed by him under the alleged authority of and pursuant to the said statute, and all these defendants cannot be fully nor adequately apprized thereof without a declaratory judgment of this Court relating to the validity of said Chapter 295 and every portion thereof.

[fol. 260] Wherefore, defendants pray for a judgment and decree of this Court construing Chapter 295, R. S. Mo., 1949, and the various Sections thereof, declaring the rights and status of these defendants and all others similarly situated thereunder, and further declaring that said Chapter 295 and all portions thereof are invalid, unenforceable, unconstitutional and in violation and derogation of the Constitution of the United States and the sections and portions thereof specifically set forth hereinabove, and further declaring that all acts performed by said Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are invalid, void, unenforceable, and without any force or effect, and defendants further pray for all other and proper relief.

Filed by Leave July 13, 1956.

In Circuit Court of the City of St. Louis

Plaintiff's Answer to Defendants' Petition for Declaratory Judgment

Comes Now The Plaintiff, and for its answer to Defendants' Petition for Declaratory Judgment filed herein, states:

1. That said petition for declaratory judgment does not state facts showing the existence of a justiciable controversy between the defendants and this plaintiff.

2. That said petition for declaratory judgment does not state facts showing that the defendants are entitled to the relief prayed for, or to any relief.

Further Answering, Plaintiff states:

3. That it admits the affirmative allegations of paragraphs 2, 3, 5, 6, 7, 8, 9, 10 and 15 of Defendants' Return to Order to Show and Motion to Dismiss, which allega- [fol. 261] tions are incorporated by reference in said petition for declaratory judgment.

4. That it admits the allegation of paragraph 12 of said Defendants' Return to Order to Show Cause and Motion to Dismiss, except the allegation therein contained that said strike was lawfully called and conducted, which allegation plaintiff denies.

5. That it denies the allegations of paragraphs 13, 14, 16 and 17, and all sub-paragraphs of any of said paragraphs, of Defendants' Return to Order to Show Cause and Motion to Dismiss, and paragraphs 2 and 3 of said Petition for Declaratory Judgment.

Wherefore, Plaintiff prays that Defendants' Petition for Declaratory Judgment be dismissed, or that, in the alternative, this Court enter its judgment declaring Chapter 295 R. S. Mo., 1949 to be valid, enforceable and constitutional, and for such other and further relief as the Court may deem proper.

Filed by leave July 13, 1956.

Thereupon the matter was argued by counsel for all parties, at the conclusion of which argument the Court made the following oral ruling:

The Court: I would not say that the legal question involved in this case is a simple one. I think it is a narrow one. The question, as I see it, is whether these provisions—the seizure provisions—of the King-Thompson Act are constitutional or not; and I think that is the only question to be decided by me in this proceeding. The only cases I know of that bear directly on this Act are the Julian case and the Pigg case. In the Pigg case the court expressly stated that it was not passing on the constitutionality of the sections which are involved here. The other case—the Julian case as I call it—has nothing to do particularly with these sections, and the court stated the constitutional ques- [fol. 262] tion was not properly raised. That means, then, that I face this question with no direct authority in this state. I grant that the Amalgamated case, which has been referred to, throws doubt on the constitutionality of this Act. However, as I read the case, and as I read the Wisconsin statute, there are material differences in the Wisconsin Act and this Act.

I think it is a firmly established principle in this state that a trial court should not declare an act of the General Assembly unconstitutional without it being clearly so. This act was passed by the General Assembly, the representatives of the people of this state, after debate and careful consideration, and it is the law of this state. I consider the Amalgamated case in this connection indirect authority, and not, in my mind, sufficiently direct on the act involved here to declare it unconstitutional; and, for that reason, I will not do so. Close constitutional questions in general are, of course, to be determined by the upper courts. And, again, I say, unless it is clear to a trial judge that an act is unconstitutional he should not declare it so. I do not feel this is clearly so. Therefore, I am of the opinion that I should rule the act constitutional, and the injunction should issue. You may prepare a draft for my signature.

Your petition for a declaratory judgment of unconstitutionality will be denied.

Mr. Levin: Your Honor, can I, in accordance with the provisions of the Revised Statutes, Section 510.310, file this application for findings of fact and conclusions, as provided in the statute; which would serve as part of the record on any appeal that may be lodged in the case?

The Court: You may file it, but I will not make any. That request was not made before this case was taken as submitted and decided.

[fol. 263]

In Circuit Court of the City of St. Louis

Defendants' Application for Findings of Fact and Statement of Grounds for Decision—Filed July 13, 1956

Now come the defendants herein and respectfully petition the Court as follows:

1. Defendants specifically request herewith, before final submission of the above cause, that the Court shall dictate to the Court Reporter or prepare and file an opinion containing a statement of the grounds for its decision and the method of determining damages, if any, that may be awarded in the above cause.

2. Defendants specifically request that the Court make specific findings of fact on each and every one of the principal controverted fact issues in the above cause.

Filed July 13, 1956, and by the Court denied.

In Circuit Court of the City of St. Louis

Decree—July 14, 1956

This cause having been heard heretofore, to-wit, on July 11, 12 and 13, 1956, on plaintiff's application for a temporary injunction and on the Order to Show Cause, heretofore issued by the Court on July 9, 1956, and it having been stipulated by and between the plaintiff and the defendants that the issues on plaintiff's petition for a permanent injunction should be submitted to the Court for a decision on the pleadings and on the evidence submitted to

the Court on July 11, 12 and 13, 1956, and the whole matter [fol. 264] having been duly heard and the cause submitted to the Court, and the Court being now fully advised in the matter does find the issues in favor of the plaintiff and against the defendants, and

Whereas, it appearing to the Court that the Governor of the State of Missouri, pursuant to the authority vested in him by Chapter 295, R. S. Mo. 1949, and particularly Section 295.180, R. S. Mo. 1949, took possession of the plants, equipment and all facilities of the Laclede Gas Company, a public utility, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 4:00 o'clock P. M., Central Standard Time, July 5, 1956, and

Whereas, it appearing to the Court that the defendant Unions, the defendant Officers of said Unions, and the defendant Employees of the Laclede Gas Company, including the defendants individually named, have incited, supported and participated in, as a joint and common cause, a work stoppage and strike against the Laclede Gas Company and in a refusal to work by said defendant employees for and on behalf of the State of Missouri in distributing, selling, and furnishing gas to the customers of Laclede Gas Company through the plants' equipment and facilities of the Laclede Gas Company, all subsequent to the action of the Governor of the State of Missouri, in taking possession of the plants, facilities and equipment of the Laclede Gas Company, aforesaid, and

Whereas, it appearing to the Court that the action of the defendant Unions, defendant Officers and defendant employees, in inciting, supporting and participating in said strike and concerted refusal to work for the Laclede Gas Company and the State of Missouri after said plants, equipment and facilities of the Laclede Gas Company had been taken over by the State of Missouri, as aforesaid, is unlawful, and

[fol. 265] Whereas, it appearing to the Court that the defendant Unions, defendant Officers and defendant employees will continue to incite, support and participate in

said strike and concerted refusal to work for the Laclede Gas Company and the State of Missouri, aforesaid, unless said defendants are restrained and enjoined by this Court, and

It appearing to the Court that the plaintiff is without adequate remedy at law in the premises;

It Is Ordered, Adjudged and Decreed that said defendants and all other persons to whom notice of this order of injunction may come, be, and they are hereby permanently enjoined and restrained from continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike aforesaid against the Laclede Gas Company or the State of Missouri.

It Is Ordered, Adjudged and Decreed that defendants' petition for a declaratory judgment be denied.

The costs of this proceeding are adjudged against the defendants.

Done at the City of St. Louis, Missouri, July 14, 1956.

Ivan Lee Holt, Jr., Judge of the Circuit Court for the City of St. Louis, State of Missouri.

In Circuit Court of the City of St. Louis

Defendants' Motion to Set Aside Decree of Injunction, Exceptions to Decree of Injunction, Motion for Declaratory Judgment, or in the Alternative, Motion for New Trial—Filed July 23, 1956

[fol. 266] Now come the defendants herein and respectfully move this Honorable Court to set aside and hold for naught the Decree of injunction issued and entered in this cause on July 14, 1956, for judgment in favor of the defendants, and for the entry of a declaratory judgment by the Court as prayed for by the defendants in their petition for declaratory judgment, or in the alternative, defendants move the Court for a new trial herein for the following reasons:

1. Defendants state that the Court erred in issuing its decree of injunction entered herein on July 14, 1956, for the reason that the plaintiff's petition failed to state a cause of action.

2. The Court erred in entering its decree of injunction herein for the reason that said decree is not supported by the evidence in this cause.

3. The Court erred in entering its decree of injunction herein for the reason that said decree is not supported by the greater weight of the evidence in this cause.

4. The Court erred in entering its decree of injunction herein for the reason that said decree is not supported by the law under the evidence in this cause.

5. The Court erred in entering its decree of injunction for the reason that said judgment and decree are contrary to the law and this Court was without jurisdiction or authority to enter the same.

6. The Court erred in entering its decree of injunction for the reason that the evidence before the Court demonstrated that the alleged labor dispute sought to be enjoined by plaintiff's petition and the decree of Court involved and affected and arose and existed between an employer engaged in activities affecting commerce within the meaning of the Labor-Management Relations Act, 1947, [fol. 267] and labor organizations representing its employees duly certified and authorized to act on their behalf under and pursuant to the provisions of the Labor-Management Relations Act, 1947, and that the labor relationship and activities which were the subject of plaintiff's petition and the decree of injunction entered herein were cognizable solely and exclusively under the provisions of said Labor-Management Relations Act, 1947.

7. The Court erred in entering its decree of injunction for the reason that acts, activities and conduct of the defendants complained of in plaintiff's petition were protected activities permitted to them under the provisions of the Labor-Management Relations Act, 1947, and the Court was without authority, right or jurisdiction to restrain.

enjoin or prohibit the lawful conduct allowed and permitted to these defendants pursuant to said Federal statute.

8. The Court erred in failing and refusing to issue its finding and ruling that Laclede Gas Company was engaged in activities affecting commerce, and is and was at all times material hereto engaged in interstate commerce within the meaning of the Labor-Management Relations Act, 1947.

9. The Court erred in failing and refusing to find and rule that Laclede Gas Company is and was at all times material hereto subject in all of its labor relations to the jurisdiction of the National Labor Relations Board and the provisions of the National Labor Relations Act and the Labor-Management Relations Act, 1947, as amended.

10. The Court erred in failing and refusing to find and rule that the National Labor Relations Board has at all times and consistently and regularly asserted and exercised jurisdiction over Laclede Gas Company and all the defendants in all their labor relations.

[fol. 268] 11. The Court erred in failing and refusing to find and rule that the labor relations between Laclede Gas Company and all these defendants and the defendant local unions were governed by and under written collective bargaining contracts executed pursuant to and under the provisions of the National Labor Relations Act and the Labor-Management Relations Act, 1947, as amended.

12. The Court erred in failing and refusing to find and rule that the most recent collective bargaining contracts between Laclede Gas Company and these defendants expired by their terms at Midnight, June 30, 1956, and that subsequent to said time there were no collective bargaining contracts in existence between said Laclede Gas Company and the defendant local unions nor any agreements governing or binding any of the defendants herein.

13. The Court erred in failing and refusing to find and rule that each of the defendant local unions did, more than sixty days prior to the expiration date of their last contract with the Laclede Gas Company, give notice of

the termination of their contracts expiring June 30, 1956, and give notice of changes desired by them in the terms and conditions of their collective bargaining contracts in the manner provided by the Labor-Management Relations Act, 1947.

14. The Court erred in failing and refusing to find and rule that Laclede Gas Company gave written notice to each of the defendant local unions sixty days and more prior to the expiration of their last contracts of the termination of said contracts as of June 30, 1956, and of the changes desired by it in the terms and conditions of said collective bargaining contracts, all at the time and in the manner provided by the Labor-Management Relations Act, 1947.

15. The Court erred in failing and refusing to find and rule that Laclede Gas Company and each of the defendant [fol. 269] local unions gave notice in the form required in compliance with Section 8 (d) (3) of the Labor-Management Relations Act, 1947, and served the same on the Federal Mediation and Conciliation Service of changes desired by each of them in their collective bargaining contracts and of the existence of a labor dispute between Laclede Gas Company and the Defendant local unions.

16. The Court erred in failing and refusing to find and rule that Laclede Gas Company and each of the defendant local unions did serve the Missouri State Board of Mediation with written notice of requests for changes in their collective bargaining contracts expiring June 30, 1956, and of the existence of a labor dispute between these defendant local unions and Laclede Gas Company, as required by and in compliance with Section 8 (d) (3) of the Labor-Management Relations Act, 1947.

17. The Court erred in failing and refusing to find and rule that any strike action taken by these defendant local unions was pursuant to and protected under the provisions of Section 13 of the Labor-Management Relations Act, 1947.

18. The Court erred in failing and refusing to find and rule that any strike action or concerted refusal to work by these defendants or any of them following July 5, 1956,

was protected under an action taken pursuant to the provisions of Section 13 of the Labor-Management Relations Act, 1947.

19. The Court erred in its finding and ruling that these defendants or any of them at any time were engaged in a work stoppage or strike against the State of Missouri.

20. The Court erred in its finding and ruling that these defendants or any of them or any of the members of the defendant local unions at any time refused to work for and on behalf of the State of Missouri or that these defendants or any of them or any of the members of the defendant [fol. 270] local unions are or were at any time employees of the State of Missouri.

21. The Court erred in its finding and ruling that these defendants while on strike were employees of the State of Missouri or were striking as employees of the State of Missouri.

22. The Court erred in failing and refusing to find and rule that these defendants and the members of the defendant local unions were never at any time employees of the State of Missouri and at no time refused to work for and on behalf of the State of Missouri.

23. The Court erred in failing and refusing to find and rule that the State of Missouri and its agents at all times disclaimed these defendants or any of the members of the defendant local unions as its employees and denied that these defendants or any of them were ever employees or working for and on behalf of the State of Missouri.

24. The Court erred in failing and refusing to find and rule that the Proclamation issued by Phil M. Donnelly, as Governor of the State of Missouri, on July 5, 1956, purporting to seize the properties of Laclede Gas Company were without right or authority, and that Chapter 295, Revised Statutes of Missouri, 1949, under which the said Proclamation was issued and alleged seizure occurred, was unconstitutional and in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Fourteenth Amendment of the

Constitution of the United States and in violation of the Constitution of the State of Missouri, and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of these defendants' and all members of the defendant local unions rights, and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

[fol. 271] 25. The Court erred in failing and refusing to find and rule that the Executive Order No. 1 issued by Phil M. Donnelly, as Governor of the State of Missouri, on July 5, 1956, purporting to seize the properties of Laclede Gas Company were without right of authority, and that Chapter 295, Revised Statutes of Missouri, 1949, under which the said Executive Order was issued and alleged seizure occurred, was unconstitutional and in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 8, 2, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions, and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

26. The Court erred in failing and refusing to find and rule that Executive Order No. 2 issued by Phil M. Donnelly as Governor of the State of Missouri, on July 5, 1956, purporting to appoint Daniel C. Rogers his agent in seizing the properties of Laclede Gas Company was without right or authority, and that Chapter 295, Revised Statutes of Missouri, 1949, under which the said Executive Order was issued, was unconstitutional and in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said

Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management [fol. 272] Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

27. The Court erred in failing and refusing to find and rule that the service of said Proclamation of Phil M. Donnelly, as Governor of the State of Missouri, dated July 5 1956, purporting to declare a state of emergency because of the strike against Laclede Gas Company was without warrant or authority and without force or effect, and that the same was in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions, and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

28. The Court erred in failing and refusing to find and rule that the service of said Executive Order No. 1 issued by Phil M. Donnelly, as Governor of the State of Missouri, dated July 5, 1956, was without warrant or authority and without force or effect, and that the same was in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

[fol. 273] 29. The Court erred in failing and refusing to find and rule that the service of said Executive Order No. 2 issued by Phil M. Donnelly, as Governor of the State of Missouri, dated July 5, 1956, was without warrant or authority and without force or effect, and that the same was in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

30. The Court erred in failing and refusing to find that the alleged seizure of the properties by the State of Missouri was mere token seizure and not real or substantial.

31. The Court erred in failing and refusing to find and rule that the alleged seizure by the State of Missouri was fictional and in no wise changed the relationship of the employees of Laclede Gas Company to their employer.

32. The Court erred in failing and refusing to find and rule that after the alleged seizure by the State of Missouri the relationships between these defendants and Laclede Gas Company and the employees of that Company remained exactly as they had been prior to that seizure and that the relationship of master and servant and its attributes had not changed as a result of that seizure.

33. The Court erred in failing and refusing to find and rule that neither as a result of the seizure or at any time following the seizure did these defendants or any of their members become the employees of the State of Missouri or of any political subdivision thereof.

[fol. 274] 34. The Court erred in failing and refusing to find and rule that the alleged seizure by the Governor of the State of Missouri did not deprive these defendants or the employees of Laclede Gas Company of any of their rights

under Federal law nor of any of the protections vouchsafed to them as employees under the provisions of the Labor-Management Relations Act, 1947.

35. The Court erred in failing and refusing to find and rule that the purported seizure of Laclede Gas Company and its operations by Phil M. Donnelly, as Governor of the State of Missouri, was without warrant or authority and without force or effect for the reason that said Act and all things done pursuant thereto was in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution, and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

36. The Court erred in failing and refusing to find and rule that the act of alleged seizure of Laclede Gas Company by Daniel C. Rogers, as agent for said Phil M. Donnelly, pursuant to and under the provisions of said Proclamation and Executive Orders Nos. 1 and 2 issued July 5, 1956, was without warrant, right or authority and that said act and all things done in connection therewith were void and without right or authority because the same were done and carried out pursuant to the provisions of Chapter 295, R. S. Mo. 1949, and that the same is in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thir[fol. 275] teenth and Fourteenth Amendments of the Constitution of the United States, and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

37. The Court erred in failing and refusing to find and rule that the defendant local unions and their officers and representatives met with the Chairman of the Missouri State Board of Mediation and all other members of the said State Board of Mediation at the time and place and whenever requested to do so for the purpose of mediating the labor dispute or any other purpose for which said meeting or meetings were called by the State Board of Mediation or its Chairman.

38. The Court erred in failing and refusing to find and rule that the defendant local unions and their officers and representatives at no time failed, neglected or refused to meet or deal with the Missouri State Board of Mediation and its Chairman for any purpose desired by said State Board of Mediation and its Chairman.

39. The Court erred in failing and refusing to find and rule that the defendant local unions and their officers and representatives at all times were available for use of the facilities and procedures provided by Chapter 295 of the Revised Statutes of Missouri for conciliation or mediation of the labor dispute between the defendant local unions and Laclede Gas Company.

40. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act of 1935, as amended by the Labor-Management Relations Act, 1947, and therefore [fol. 276] is unconstitutional and invalid because it violates Section 8 of Article I and Article VI of the Constitution of the United States.

41. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act and the Labor-Management Relations Act, 1947, and interferes with the purposes of said Acts to promote voluntary labor agreements through free collective bargaining.

42. The Court erred in failing and refusing to find and rule that Section 295.200 of said statute, which makes it unlawful for employees of public utilities to strike, is in conflict with the Labor-Management Relations Act, 1947.

and Section 13 thereof, and is in violation of Article VI of the Constitution of the United States.

43. The Court erred in failing and refusing to find and rule that Section 295.180 of said statute, providing that a public utility may be seized on the terms and conditions therein set forth, is in conflict with the Labor-Management Relations Act, 1947, including, but not limited to Section 13 thereof.

44. The Court erred in failing and refusing to find and rule that Sections 295.120 to 295.170, inclusive, R. S. Mo., 1949, providing for public hearing panels, is in conflict with the Labor-Management Relations Act, 1947.

45. The Court erred in failing and refusing to find and rule that Section 295.200 of said Revised Statutes of Missouri, 1949, providing penalties for employees who strike in economic strikes and penalizing public utilities which refuse to bargain collectively in good faith with employees, is in conflict with and in violation of the National Labor Relations Act, including, but not limited to Sections 2 (3), 7, 8 and 13 of said Labor-Management Relations Act, 1947, and attempts to legislate on a subject and in an area fully pre-empted by Federal law.

[fol. 277] 46. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, by its substance, terms and the purported effect thereof, is void on its face and invalid as being in conflict with Article I, Section 29 of the Constitution of Missouri, 1945, and the rights guaranteed to workers thereunder.

47. The Court erred in failing and refusing to find and rule that Chapter 295.090, R. S. Mo., 1949, constitutes a denial of the right of free collective bargaining by utility employees through representatives of their own choosing, and is unconstitutional and void under Article VI of the Constitution of the United States as being in conflict with the Labor-Management Relations Act, 1947.

48. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the pro-

visions of Section 1 of Article II of the Constitution of Missouri, 1945, and that by the unlawful delegation of legislative powers.

49. The Court erred in failing and refusing to find and rule that Sections 295.120 to 295.180, inclusive, R. S. Mo., 1949, are and constitute unlawful delegations of legislative power and authority to the Governor and to the members of the panels provided for therein.

50. The Court erred in failing and refusing to find and rule that Section 295.200 (1), R. S. Mo., 1949, by its terms, substance and effect, on its face is void and violates the provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First and Fourteenth Amendments to the Constitution of the United States, and is a denial of freedom of speech and freedom of assemblage and equal protection of the laws, in violation of said Constitutions.

51. The Court erred in failing and refusing to find and rule that Section 295.090, R. S. Mo., 1949, by its terms, [fol. 278] substance and effect, is void on its face and violates the provisions of Sections 2, 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the provisions of the First and Fourteenth Amendments of the Constitution of the United States and is in conflict with the Labor-Management Relations Act, 1947.

52. The Court erred in failing and refusing to find and rule that Section 295.180, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 13 of Article I of the Constitution of Missouri, 1945, and violates the provisions of Section 10 of Article I of the Constitution of the United States.

53. The Court erred in failing and refusing to find and rule that Section 295.200, R. S. Mo., 1949, by its terms, substance and effect, is void on its face, and violates the provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and is in conflict with the provisions

of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended.

54. The Court erred in failing and refusing to find and rule that Section 295.200, R. S. Mo., 1949, is a denial of the freedom of speech, freedom of assemblage and equal protection of the laws; the penal provisions thereof provide for imposition of excessive fines, and the terms and substance thereof impose a form of compulsory service or involuntary servitude.

55. The Court erred in failing and refusing to find and rule that Section 295.200 (2) R. S. Mo., 1949, is an attempt to take property without due process of law, interferes with freedom of contract and denies to all employees of utilities the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 279] 56. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is in conflict with various provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended, in that it attempts to deny and take away rights guaranteed by Sections 2 (3), 7, 8 and 13 and other provisions of said Acts.

57. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is unlawful and invalid in its entirety, because it attempts to legislate and operate in a field and cover activities fully pre-empted by and covered by existing Federal law enacted by the Congress pursuant to authority of the Constitution of the United States.

58. The Court erred in failing and refusing to find and rule and in not rendering a declaratory judgment that a continuing dispute exists affecting these defendants and each of them and all members of the defendant local unions, and that these defendant local unions and their members are and will continue to be adversely affected by the acts, conduct and things done, performed and threatened by Phil M. Donnelly, as Governor of the State

of Missouri, pursuant to and under the alleged authority of Chapter 295, R. S. Mo., 1949.

59. The Court erred in failing and refusing to find and rule that a justiciable controversy exists between these defendants and the State of Missouri concerning the validity, legality and constitutionality of Chapter 295, Revised Statutes of Missouri, 1949, and the various sections thereof, and that these defendants are entitled to have a full declaratory judgment of this Court of their rights thereunder and of the validity, legality and constitutionality of said Act and every provision thereof, and of the status of employment of the members of the defendant unions or their other status under the said law.

[fol. 280] 60. The Court erred in failing and refusing to find and rule that so long as Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 thereof are not ruled on, the defendants and each of them and all the members of the defendant local unions will suffer loss and damage and will be denied the enjoyment of their rights and privileges as employees of Laclede Gas Company and be deprived of the protection of the right of free collective bargaining guaranteed to each of them under the Labor-Management Relations Act, 1947, as amended.

61. The Court erred in failing and refusing to find and rule that said Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 are and constitute a continuing threat to these defendants and each of them and each of the individual members of the defendant local unions in denying them the enjoyment of their rights and privileges as employees of Laclede Gas Company and depriving them of the protection of the right of free collective bargaining guaranteed to each of them under Federal law and the Labor-Management Relations Act, 1947, and constitutes a continuing impairment of the constitutional rights of these defendants as herein stated in all future and continuing collective bargaining and collective bargaining relations affecting these defendants and the Laclede Gas Company.

62. The Court erred in failing and refusing to find and rule that said Chapter 295, R. S. Mo., 1949, and Sections

295.180 and 295.200 thereof denies and continues to deny to these defendants and each of them the full freedom of association among these defendants and denies and continues to deny all these defendants equality of bargaining power with Laclede Gas Company, and that said Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 thereof are and will continue to be a constant and continuing interference with and impediment to free col- [fol. 281] lective bargaining between Laclede Gas Company and these defendants which is provided for and required by and protected under the provisions of the Labor-Management Relations Act, 1947, as amended, and that such interference and impediment will continue until the rights of these defendants thereunder are declared and ruled upon by the Court.

63. The Court erred in finding and ruling that these defendants and all other persons to whom notice of said decree of injunction might come be permanently enjoined and restrained from continuing, inciting, supporting and participating in any work stoppage against Laclede Gas Company.

64. The Court erred in finding and ruling that these defendants and all other persons to whom notice of said decree of injunction might come be permanently enjoined and restrained from refusing to work and to strike against the Laclede Gas Company.

65. The Court erred in finding and ruling that these defendants and all other persons to whom notice of said decree of injunction might come be permanently enjoined and restrained from refusal to work or strike against the State of Missouri.

66. The Court erred in denying the defendants' petition for a declaratory judgment.

67. The Court erred in failing and refusing to issue the judgment and decree of the Court construing Chapter 295, R. S. Mo., 1949, and the various sections thereof.

68. The Court erred in failing and refusing to issue its judgment and decree declaring the status of these defen

dants and all other similarly situated under Chapter 295, R. S. Mo., 1949.

69. The Court erred in failing and refusing to declare that Chapter 295 and all portions thereof are invalid, un- [fol. 282] enforceable, unconstitutional and in violation of and in derogation of the Constitution of the United States and Article I, Section 8 and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States, and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution.

Wherefore, defendants respectfully pray that the Court set aside and hold for naught its decree of injunction issued herein on July 14, 1956 and issue judgment in favor of the defendants as prayed for herein, and defendants further pray that the Court issue its declaratory judgment and judgment and decree construing Chapter 295, Revised Statutes of Missouri, 1949, and the various sections thereof, declaring the rights and status of these defendants and all others similarly situated thereunder, and further declaring that said Chapter 295 and all portions thereof are invalid, unenforceable, unconstitutional and in violation and derogation of the Constitution of the United States and the sections and portions thereof specifically set forth hereinabove, and further declaring that all acts performed by said Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are invalid, void, unenforceable and without any force or effect, and defendants further pray for all other and proper relief; or in the alternative, defendants move that the Court sustain this motion for new trial for all the reasons set forth above.

Defendants' said motion to set aside decree of injunction, etc., was submitted to the Court without argument.

IN CIRCUIT COURT OF THE CITY OF ST. LOUIS

PLAINTIFF'S MOTION TO AMEND DECREE—Filed July 23, 1956

[fol. 283] I.

Comes now the plaintiff herein and moves the Court to amend the decree previously entered in this cause on July 14, 1956, by striking therefrom the portion of said decree which reads: "It is ordered, adjudged and decreed that defendants' petition for a declaratory judgment be denied" and substituting in lieu thereof the following: "It is ordered, adjudged and decreed that defendants' petition for a declaratory judgment be dismissed."

Upon the grounds that the cross-petition of defendants for a declaratory judgment does not allege facts showing the existence of a justiciable controversy between the defendants herein and this plaintiff, said cross-petition should, therefore, be dismissed.

II.

As and for alternative relief, plaintiff moves the Court to amend the decree previously entered in this cause on July 14, 1956, by striking therefrom the portion of said decree which reads: "It is ordered, adjudged and decreed that defendants' petition for a declaratory judgment be denied" and by substituting in lieu thereof the following: "It is ordered, adjudged and decreed pursuant to the prayer of defendants' cross-petition for a declaratory judgment that Chapter 295, R. S. Mo., 1949, and all portions thereof are valid, enforceable, constitutional and not in violation or derogation of the Constitution of the United States in the particulars specified in defendants' cross-petition for a declaratory judgment; that the acts performed by Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are valid and enforceable; that it is unlawful, under said Chapter 295, R. S. Mo., 1949, for the defendant employees and unions to call, incite, support or participate in any strike or concerted refusal to work for [fol. 284] the Laclede Gas Company or the State of Missouri as a means of enforcing any demands against the Laclede

Gas Company or the State of Missouri so long as the proclamation and executive orders issued on July 5, 1956, by Phil M. Donnelly, Governor of the State of Missouri, pursuant to the authority conferred upon him by Section 295.180, R. S. Mo., 1949, seizing the plants, equipment and facilities of the Laclede Gas Company for the use and operation by the State of Missouri in the public interest shall remain in force and effect."

Upon the grounds that, the defendants having requested an adjudication with respect to the validity of Chapter 295, R. S. Mo., 1949, this Court should enter its judgment and decree declaring said Chapter 295, R. S. Mo., 1949, to be valid and constitutional.

Thereafter and on August 13, 1956, by consent, the submission without argument, on July 23, 1956, of defendants' motion to set aside decree of injunction, exceptions to decree of injunction, motion for declaratory judgment, or, in the alternative, motion for a new trial, was set aside, and said motion argued by counsel for the respective parties and submitted, as was also plaintiff's motion to amend the decree.

IN CIRCUIT COURT OF THE CITY OF ST. LOUIS

Plaintiff's Motion to Amend Decree Denied in Part and Granted in Part—Defendants' Motion to Set Aside Decree of Injunction, Exceptions to Decree of Injunction, Motion for Declaratory Judgment and Motion for New Trial Denied.

And, thereafter, on August 17, 1956, the Court, having considered the same, denied plaintiff's motion to amend decree as to Specification I and granted said motion as [fol. 285] to Specification II; and denied defendants' motion to set aside decree of injunction, exceptions to decree of injunction, motion for declaratory judgment and motion for a new trial; all as set out in Record Book 837, at page 275, as follows:

ORDER OF COURT—August 17, 1956

Plaintiff's motion to amend decree denied as to Specification I and granted as to Specification II as hereinafter set out. Decree of July 14, 1956, amended by striking therefrom in the fourth and third lines from the bottom of the second page, "It is ordered, adjudged and decreed that defendants' petition for a declaratory judgment be denied," and inserting in lieu thereof the following:

"It is ordered, adjudged, and decreed on defendants' petition for a declaratory judgment that Chapter 295, R. S. Mo., 1949, and all portions thereof are valid, enforceable, constitutional, and not in violation or derogation of the Constitution of the United States or of the Constitution of the State of Missouri; that the acts performed by Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are valid and enforceable; that it is unlawful under said Chapter 295, R. S. Mo., 1949, for the defendants to incite, support or participate in any strike or concerted refusal to work for the Laclede Gas Company or the State of Missouri as a means of enforcing any demands against the Laclede Gas Company or the State of Missouri so long as the proclamation and executive orders issued on July 5, 1956, by Phil M. Donnelly, Governor of the State of Missouri, pursuant to the authority conferred upon him by Section 295.180, R. S. Mo., 1949, seizing the plants, equipment and facilities of the Laclede Gas Company for the use and operation by the State of Missouri in the public interest shall remain in force and effect."

[fol. 286] Defendants' motion to set aside decree of injunction, exceptions to decree of injunction, motion for declaratory judgment and motion for a new trial, all denied.

Done at the City of St. Louis, Missouri, August 17th, 1956.

Ivan Lee Holt, Jr., Circuit Judge.

In Circuit Court of the City of St. Louis

Defendants' Motion for a New Trial—Filed August 20, 1956

Thereafter and on August 20, 1956 defendants filed and submitted without oral argument their motion for a new trial as follows (omitting caption and signature):

Now comes the defendants herein and respectfully move this Honorable Court to set aside and hold for naught the Decree of Injunction issued and entered in this cause on July 14, 1956, as amended by the Order of Court entered herein on August 17, 1956, and to set aside and hold for naught the Order of Court entered by the Court on August 17, 1956, and for a new trial herein for the following reasons:

1. Defendants state that the Court erred in issuing its decree of injunction for the reason that the plaintiff's petition failed to state a cause of action.

2. The Court erred in entering its decree of injunction herein for the reason that said decree is not supported by the evidence in this cause.

3. The Court erred in entering its decree of injunction herein for the reason that said decree is not supported by the greater weight of the evidence in this cause.

4. The Court erred in entering its decree of injunction herein for the reason that said decree is not supported by the law under the evidence in this cause.

[fol. 287] 5. The Court erred in entering its decree of injunction for the reason that said judgment and decree are contrary to the law and this Court was without jurisdiction or authority to enter the same.

6. The Court erred in entering its decree of injunction for the reason that the evidence before the Court demonstrated that the alleged labor dispute sought to be enjoined by plaintiff's petition and the decree of Court involved and affected and arose and existed between an employer engaged in activities affecting commerce within the meaning of the Labor-Management Relations Act, 1947,

and labor organizations representing its employees duly certified and authorized to act on their behalf under and pursuant to the provisions of the Labor Management Relations Act, 1947, and that the labor relationship and activities which were the subject of plaintiff's petition and the decree of injunction entered herein were cognizable solely and exclusively under the provisions of said Labor Management Relations Act, 1947.

7. The Court erred in entering its decree of injunction for the reason that acts, activities and conduct of the defendants complained of in plaintiff's petition were protected activities permitted to them under the provisions of the Labor Management Relations Act, 1947, and the Court was without authority, right or jurisdiction to restrain, enjoin or prohibit the lawful conduct allowed and permitted to these defendants pursuant to said Federal statute.

8. The Court erred in failing and refusing to issue its finding and ruling that Laclede Gas Company was engaged in activities affecting commerce, and is and was at all times material hereto engaged in interstate commerce within the meaning of the Labor Management Relations Act, 1947.

[fol. 2884] 9. The Court erred in failing and refusing to find and rule that Laclede Gas Company is and was at all times material hereto subject in all of its labor relations to the jurisdiction of the National Labor Relations Board and the provisions of the National Labor Relations Act and the Labor Management Relations Act, 1947, as amended.

10. The Court erred in failing and refusing to find and rule that the National Labor Relations Board has at all times and consistently and regularly asserted and exercised jurisdiction over Laclede Gas Company and all the defendants in all their labor relations.

11. The Court erred in failing and refusing to find and rule that the labor relations between Laclede Gas Company and all these defendants and the defendant local unions were governed by and under written collective bargaining contracts executed pursuant to and under the pro-

visions of the National Labor Relations Act and the Labor-Management Relations Act, 1947, as amended.

12. The Court erred in failing and refusing to find and rule that the most recent collective bargaining contracts between Laclede Gas Company and these defendants expired by their terms at Midnight, June 30, 1956, and that subsequent to said time there were no collective bargaining contracts in existence between said Laclede Gas Company and the defendant local unions nor any agreements governing or binding any of the defendants herein.

13. The Court erred in failing and refusing to find and rule that each of the defendant local unions did, more than sixty days prior to the expiration date of their last contracts with the Laclede Gas Company, give notice of the termination of their contracts expiring June 30, 1956, and give notice of changes desired by them in the terms and conditions of their collective bargaining contracts in the manner provided by the Labor-Management Relations Act, 1947.

[fol. 289] 14. The Court erred in failing and refusing to find and rule that Laclede Gas Company gave written notice to each of the defendant local unions sixty days and more prior to the expiration of their last contracts of the termination of said contracts as of June 30, 1956, and of the changes desired by it in the terms and conditions of said collective bargaining contracts, all at the time and in the manner provided by the Labor-Management Relations Act, 1947.

15. The Court erred in failing and refusing to find and rule that Laclede Gas Company and each of the defendant local unions gave notice in the form required in compliance with Section 8 (d) (3) of the Labor-Management Relations Act, 1947, and served the same on the Federal Mediation and Conciliation Service of changes desired by each of them in their collective bargaining contracts and of the existence of a labor dispute between Laclede Gas Company and the defendant local unions.

16. The Court erred in failing and refusing to find and rule that Laclede Gas Company and each of the defendant

local unions did serve the Missouri State Board of Mediation with written notice of requests for changes in their collective bargaining contracts expiring June 30, 1956 and of the existence of a labor dispute between these defendant local unions and Laclede Gas Company, as required by and in compliance with Section 8 (d) (3) of the Labor-Management Relations Act, 1947.

17. The Court erred in failing and refusing to find and rule that any strike action taken by these defendant local unions was pursuant to and protected under the provisions of Section 13 of the Labor-Management Relations Act, 1947.

18. The Court erred in failing and refusing to find and rule that any strike action or concerted refusal to work by these defendants or any of them following July 5, 1956, [fol. 290] was protected under and action taken pursuant to the provisions of Section 13 of the Labor-Management Relations Act, 1947.

19. The Court erred in its finding and ruling that these defendants or any of them at any time were engaged in a work stoppage or strike against the State of Missouri.

20. The Court erred in its finding and ruling that these defendants or any of them or any of the members of the defendant local unions at any time refused to work for and on behalf of the State of Missouri or that these defendants or any of them or any of the members of the defendant local unions are or were at any time employees of the State of Missouri.

21. The Court erred in its finding and ruling that these defendants while on strike were employees of the State of Missouri or were striking as employees of the State of Missouri.

22. The Court erred in failing and refusing to find and rule that these defendants and the members of the defendant local unions were never at any time employees of the State of Missouri and at no time refused to work for and on behalf of the State of Missouri.

23. The Court erred in failing and refusing to find and rule that the State of Missouri and its agents at all times disclaimed these defendants or any of the members of the defendant local unions as its employees and denied that these defendants or any of them were ever employees or working for and on behalf of the State of Missouri.

24. The Court erred in failing and refusing to find and rule that the Proclamation issued by Phil M. Donnelly, as Governor of the State of Missouri, on July 5, 1956, purporting to seize the properties of Laclede Gas Company were without right or authority, and that Chapter 295, [fol. 291] Revised Statutes of Missouri, 1949, under which the said Proclamation was issued and alleged seizure occurred, was unconstitutional and in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri, and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of these defendants' and all members of the defendant local unions rights and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

25. The Court erred in failing and refusing to find and rule that the Executive Order No. 1 issued by Phil M. Donnelly, as Governor of the State of Missouri, on July 5, 1956, purporting to seize the properties of Laclede Gas Company, were without right or authority, and that Chapter 295, Revised Statutes of Missouri, 1949, under which the said Executive Order was issued and alleged seizure occurred, was unconstitutional and in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 8, 2, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions

and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

26. The Court erred in failing and refusing to find and rule that Executive Order No. 2 issued by Phil M. Donnelly as Governor of the State of Missouri, on July 5, 1956, [fol. 292] purporting to appoint Daniel C. Rogers his agent in seizing the properties of Laclede Gas Company was without right or authority, and that Chapter 295, Revised Statutes of Missouri, 1949, under which the said Executive Order was issued; was unconstitutional and in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

27. The Court erred in failing and refusing to find and rule that the service of said Proclamation of Phil M. Donnelly, as Governor of the State of Missouri, dated July 5, 1956, purporting to declare a state of emergency because of the strike against Laclede Gas Company was without warrant or authority and without force or effect, and that the same was in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

28. The Court erred in failing and refusing to find and rule that the service of said Executive Order No. 1 issued [fol. 293] by Phil M. Donnelly, as Governor of the State of Missouri, dated July 5, 1956, was without warrant or authority and without force or effect, and that the same was in violation of the Constitution of the United States and Article I, Section 8, and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

29. The Court erred in failing and refusing to find and rule that the service of said Executive Order No. 2 issued by Phil M. Donnelly, as Governor of the State of Missouri, dated July 5, 1956, was without warrant or authority and without force or effect and that the same was in violation of the Constitution of the United States and Article I, Section 8 and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

30. The Court erred in failing and refusing to find that the alleged seizure of the properties by the State of Missouri was mere token seizure and not real or substantial.

31. The Court erred in failing and refusing to find and rule that the alleged seizure by the State of Missouri was [fol. 294] fictional and in no wise changed the relationship of the employees of Laclede Gas Company to their employer.

32. The Court erred in failing and refusing to find and rule that after the alleged seizure by the State of Missouri the relationships between these defendants and Laclede Gas Company and the employees of that Company remained exactly as they had been prior to that seizure and that the relationship of master and servant and its attributes had not changed as a result of that seizure.

33. The Court erred in failing and refusing to find and rule that neither as a result of the seizure or at any time following the seizure did these defendants or any of their members become the employees of the State of Missouri or of any political subdivision thereof.

34. The Court erred in failing and refusing to find and rule that the alleged seizure by the Governor of the State of Missouri did not deprive these defendants or the employees of Laclede Gas Company of any of their rights under Federal Law nor of any of the protections vouchsafed to them as employees under the provisions of the Labor-Management Relations Act, 1947.

35. The Court erred in failing and refusing to find and rule that the purported seizure of Laclede Gas Company and its operations by Phil M. Donnelly as Governor of the State of Missouri, was without warrant or authority and without force or effect for the reason that said act and all things done pursuant thereto was in violation of the Constitution of the United States and Article I, Section 8 and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution, and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold [fol. 295] from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

36. The Court erred in failing and refusing to find and rule that the act of alleged seizure of Laclede Gas Company by Daniel C. Rogers, as agent for said Phil M. Don

nelly, pursuant to and under the provisions of said Proclamation and Executive Orders Nos. 1 and 2 issued July 5, 1956, was without warrant, right or authority and that said act and all things done in connection therewith were void and without right or authority because the same were done and carried out pursuant to the provisions of Chapter 295, R. S. Mo., 1949, and that the same is in violation of the Constitution of the United States and Article I, Section 8 and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States, and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution and in deprivation of the rights of these defendants and all members of the defendant local unions and is an unlawful attempt to deny and withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 [1947], 29 U. S. C. 141).

37. The Court erred in failing and refusing to find and rule that the defendant local unions and their officers and representatives met with the Chairman of the Missouri State Board of Mediation and all other members of the said State Board of Mediation at the time and place and whenever requested to do so for the purpose of mediating the labor dispute or any other purpose for which said meeting or meetings were called by the State Board of Mediation or its Chairman

38. The Court erred in failing and refusing to find and rule that the defendant local unions and their officers and [fol. 296] representatives at no time failed, neglected or refused to meet or deal with the Missouri State Board of Mediation and its Chairman for any purpose desired by said Board of Mediation and its Chairman.

39. The Court erred in failing and refusing to find and rule that the defendant local unions and their officers and representatives at all times were available for use of the facilities and procedures provided by Chapter 295 of the Revised Statutes of Missouri for conciliation or mediation of the labor dispute between the defendant local unions and Laclede Gas Company.

40. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act of 1935, as amended by the Labor-Management Relations Act, 1947, and therefore is unconstitutional and invalid because it violates Section 8 of Article I and Article VI of the Constitution of the United States.

41. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations act and the Labor-Management Relations Act, 1947, and interferes with the purposes of said Acts to promote voluntary labor agreements through free collective bargaining.

42. The Court erred in failing and refusing to find and rule that Section 295.200 of said statute, which makes it unlawful for employees of public utilities to strike, is in conflict with the Labor-Management Relations Act, 1947, and Section 13 thereof, and is in violation of Article VI of the Constitution of the United States.

43. The Court erred in failing and refusing to find and rule that Section 295.180 of said statute, providing that a public utility may be seized on the terms and conditions therein set forth, is in conflict with the Labor-Management [fol. 297] Relations Act, 1947, including, but not limited to Section 13 thereof.

44. The Court erred in failing and refusing to find and rule that Section 295.120 to 295.170, inclusive, R. S. Mo., 1949, providing for public hearing panels, is in conflict with the Labor-Management Relations Act, 1947.

45. The Court erred in failing and refusing to find and rule that Section 295.200 of said Revised Statutes of Missouri, 1949, providing penalties for employees who strike in economic strikes and penalizing public utilities which refuse to bargain collectively in good faith with employees, is in conflict with and in violation of the National Labor Relations Act, including, but not limited to Sections 2 (3), 7, 8 and 13 of said Labor-Management Relations Act, 1947, and attempts to legislate on a subject and in an area fully pre-empted by Federal law.

46. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, by its substance, terms and the purported effect thereof, is void on its face and invalid as being in conflict with Article I, Section 29 of the Constitution of Missouri, 1945, and the rights guaranteed to workers thereunder.

47. The Court erred in failing and refusing to find and rule that Chapter 295.090, R. S. Mo., 1949, constitutes a denial of the right of free collective bargaining by utility employees through representatives of their own choosing, and is unconstitutional and void under Article VI of the Constitution of the United States as being in conflict with the Labor-Management Relations Act, 1947.

48. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 1, of Article II of the Constitution of Missouri, 1945, and that by the unlawful delegation of legislative powers.

[fol. 298] 49. The Court erred in failing and refusing to find and rule that Sections 295.120 to 295.180, inclusive, R. S. Mo., 1949, are and constitute unlawful delegations of legislative power and authority to the Governor and to the members of the panels provided for therein.

50. The Court erred in failing and refusing to find and rule that Section 295.200 (4), R. S. Mo., 1949, by its terms, substance and effect, on its face is void and violates the provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First and Fourteenth Amendments to the Constitution of the United States, and is a denial of freedom of speech and freedom of assemblage and equal protection of the laws, in violation of said Constitutions.

51. The Court erred in failing and refusing to find and rule that Section 295.090, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Sections 2, 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the provisions of the First and Fourteenth Amendments of the Constitution of the

United States and is in conflict with the Labor Management Relations Act, 1947.

52. The Court erred in failing and refusing to find and rule that Section 295.180, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 13 of Article I of the Constitution of Missouri, 1945, and violates the provisions of Section 10 of Article I of the Constitution of the United States.

53. The Court erred in failing and refusing to find and rule that Section 295.200, R. S. Mo., 1949, by its terms, substance and effect, is void on its face, and violates the provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and is in conflict with the provisions fol. 299] of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended.

54. The Court erred in failing and refusing to find and rule that Section 295.200, R. S. Mo., 1949, is a denial of the freedom of speech, freedom of assemblage and equal protection of the laws; the penal provisions thereof provide for imposition of excessive fines, and the terms and substance thereof impose a form of compulsory service or involuntary servitude.

55. The Court erred in failing and refusing to find and rule that Section 295.200 (2), R. S. Mo., 1949, is an attempt to take property without due process of law, interferes with freedom of contract and denies to all employees of utilities the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

56. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is in conflict with various provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended, in that it attempts to deny and take away rights guaranteed by Sections 2 (3), 7, 8 and 13 and other provisions of said Acts.

57. The Court erred in failing and refusing to find and rule that Chapter 295, R. S. Mo., 1949, is unlawful and invalid in its entirety, because it attempts to legislate and operate in a field and cover activities fully pre-empted by and covered by existing Federal law enacted by the Congress pursuant to authority of the Constitution of the United States.

58. The Court erred in failing and refusing to find and rule and in not declaring that a continuing dispute exists affecting these defendants and each of them and all members of the defendant local unions, and that these defen- [fol. 300] dant local unions and their members are and will continue to be adversely affected by the acts, conduct and things done, performed and threatened by Phil M. Donnelly, as Governor of the State of Missouri, pursuant to and under the alleged authority of Chapter 295, R. S. Mo., 1949.

59. The Court erred in failing and refusing to find and rule that so long as Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 thereof are and remain in force and effect the defendants and each of them and all the members of the defendant local unions will suffer loss and damage and will be denied the enjoyment of their rights and privileges as employees of Laclede Gas Company and be deprived of the protection of the right of free collective bargaining guaranteed to each of them under the Labor-Management Relations Act, 1947, as amended.

60. The Court erred in failing and refusing to find and rule that said Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 are and constitute a continuing threat to these defendants and each of them and each of the individual members of the defendant local unions in denying them the enjoyment of their rights and privileges as employees of Laclede Gas Company and depriving them of the protection of the right of free collective bargaining guaranteed to each of them under Federal law and the Labor-Management Relations Act, 1947, and constitutes a continuing impairment of the constitutional rights of these defendants as herein stated in all future and continuing collective bargaining and collective bargaining relations affecting these defendants and the Laclede Gas Company.

61. The Court erred in failing and refusing to find and rule that said Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 thereof denies and continues to deny to these defendants and each of them the full freedom of association among these defendants and denies and continues to deny all these defendants equality of bargaining [fol. 301] power with Laclede Gas Company, and that said Chapter 295, R. S. Mo., 1949, and Sections 295.180 and 295.200 thereof are and will continue to be a constant and continuing interference with and impediment to free collective bargaining between Laclede Gas Company and these defendants which is provided for and required by and protected under the provisions of the Labor-Management Relations Act, 1947, as amended, and that such interference and impediment will continue until the rights of these defendants thereunder are declared and ruled upon by the Court.

62. The Court erred in finding and ruling that these defendants and all other persons to whom notice of said decree of injunction might come be permanently enjoined and restrained from continuing, inciting, supporting and participating in any work stoppage against Laclede Gas Company.

63. The Court erred in finding and ruling that these defendants and all other persons to whom notice of said decree of injunction might come be permanently enjoined and restrained from refusing to work and to strike against the Laclede Gas Company.

64. The Court erred in finding and ruling that these defendants and all other persons to whom notice of said decree of injunction might come be permanently enjoined and restrained from refusing to work or strike against the State of Missouri.

65. The Court erred in failing and refusing to issue the judgment and decree of the Court declaring the status of these defendants and all others similarly situated under Chapter 295, R. S. Mo. 1949.

66. The Court erred in failing and refusing to issue its judgment and decree declaring that these individual de-

fendants and all other members of the local unions employed by Laclede Gas Company are and were at all times [fol. 302] only the employees of said Laclede Gas Company—even during the period of alleged seizure by the State of Missouri.

67. The Court erred in failing and refusing to declare that these individual defendants and all other employees of Laclede Gas Company were not at any time following the alleged seizure by the State of Missouri or during the period of said alleged seizure employees of the State of Missouri or of any political subdivision thereof.

68. The Court erred in failing and refusing to declare that the said alleged seizure by the State of Missouri was not a real seizure of the properties of Laclede Gas Company, but was only nominal or technical.

69. The Court erred in failing and refusing to declare that at no time before or following the alleged seizure of Laclede Gas Company under Proclamation and Executive Orders of the Governor of the State of Missouri was there any change in the employment status of these individual defendants and other employees of Laclede Gas Company.

70. The Court erred in failing and refusing to find and declare that at all times herein mentioned, including the period following the alleged seizure of Laclede Gas Company by the State of Missouri, these individual defendants and all other members of the local unions were and remained only the employees of Laclede Gas Company, a private utility.

71. The Court erred in failing and refusing to find and declare that said alleged seizure by the State of Missouri was not real or actual, and that at no time was there any change in the relationship of master and servant established between these individual defendants and all other members of defendant local unions with Laclede Gas Company.

[fol. 303] 72. The Court erred in failing and refusing to find and declare that at all times during and following the alleged seizure of Laclede Gas Company by the State of Missouri the individual defendants and all other employees

of Laclede Gas Company were responsible only to the same officers and superiors to whom they were responsible prior to the commencement of said alleged seizure, and to no one else.

73. The Court erred in failing and refusing to find and declare that the act of alleged seizure of the Laclede Gas Company by the State of Missouri did not in any way or at any time affect the relationship of master and servant between these individual defendants and all other members of the local unions with Laclede Gas Company.

74. The Court erred in failing and refusing to declare that Chapter 295, R. S. Mo. 1949, and all portions thereof, and especially Sections 295.180 and 295.200 of said Chapter 295, are invalid, unenforceable, unconstitutional and in violation of and in derogation of the Constitution of the United States and Article I, Section 8 and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments of the Constitution of the United States, and in violation of the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution.

Wherefore, defendants respectfully pray that the Court set aside and hold for naught its Decree of Injunction issued herein on July 14, 1956, as amended by Order of Court entered August 17, 1956, and set aside and hold for naught its Order entered August 17, 1956, construing said Chapter 295, R. S. Mo. 1949, and issue judgment in favor of the defendants as prayed for herein, or in the alternative, defendants move that this Court sustain this Motion for New Trial for all the reasons set forth hereinabove.
[fol. 304]

IN CIRCUIT COURT OF THE CITY OF ST. LOUIS

DEFENDANTS' MOTION FOR NEW TRIAL DENIED—
August 21, 1956

And thereafter, on August 21, 1956, the court, having considered the same, denied defendants' said motion for a new trial, over the objections of defendants.

In Circuit Court of the City of St. Louis

[Title omitted]

Notice of Appeal—Filed August 21, 1956

Notice hereby given that the defendants above named hereby appeal to the Supreme Court of the State of Missouri from the judgment, order and decree of July 14, 1956, as amended by the Order of Court entered herein on Aug. 17, 1956, and the judgment, order and decree of the Court of August 17, 1956, entered in this action on the 14th day of July, 1956, and 17th day of August, 1956.

Morris J. Levin, Attorney for Defendants.

Dated August 21, 1956.

[fol. 305]

In Circuit Court of the City of St. Louis

Extension of Time for Filing Transcript on Appeal

On the 13th day of November, 1956, on application of defendants, by an order duly made and entered of record, the court granted defendants thirty days' additional time within which to file the Transcript on Appeal. And thereafter, on December 11, 1956, on application of Defendants, by an order duly made and entered of record, the court granted Defendants a further thirty days additional time within which to file the Transcript on Appeal.

Approval of Transcript.

This transcript on appeal is hereby approved this 10th day of January, 1956.

....., ..., ...

....., Attorneys for Plaintiff

Morris J. Levin, Attorney for Defendants.

Reporter's Certificate (omitted in printing).

[fol. 308]

IN THE SUPREME COURT OF MISSOURI

No. 46,664

STATE OF MISSOURI, Respondent,

vs.

LOCAL NO. 8-6 OIL, CHEMICAL AND ATOMIC WORKERS OF AMERICA (AFL-CIO), LOCAL NO. 8-194 OIL, CHEMICAL AND ATOMIC WORKERS OF AMERICA (AFL-CIO), AND LOCAL NO. 8-109 OIL, CHEMICAL AND ATOMIC WORKERS OF AMERICA (AFL-CIO), labor organizations, Appellants.

Appeal from the Circuit Court of the City of St. Louis, State of Missouri, Division No. 3; Hon. James F. Nangle, Judge.

Transcript of the Record on Appeal—Filed May 8, 1958

[fol. 310]

PETITION—Filed July 7, 1956

Comes now the State of Missouri, in its sovereign right, by John M. Dalton as Attorney General for the State of Missouri, acting in that behalf, and informs the court and charges as follows:

1. That the defendants, Local No. 8-6 Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194 Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109 Oil, Chemical and Atomic Workers of America (AFL-CIO), are, and were, incorporated voluntary associations of persons, with headquarters and offices in th City of St. Louis, Missouri, and are usually and commonly known as labor unions or labor organizations;

[fol. 311] 2. That the above-named defendants are the representatives and collective bargaining agents of certain employees of the Laclede Gas Company, a corporation duly

incorporated in the state of Missouri, and said defendants are the agents of and represent the employees of said Laclede Gas Company who are members of each of said unions in any controversy between said Laclede Gas Company and said employees as to hours, wages and working conditions;

3. That the Laclede Gas Company, above named, is and was at all material dates a corporation organized and existing by virtue of the laws of the State of Missouri under governmental franchise issued and authorized by the laws of said state, transacting the business of a public utility and engaged in distributing, selling and furnishing gas to the public generally, and, so engaged, is and was furnishing a life essential as described and referred to by Chapter 295 of the Revised Statutes of Missouri, 1949;

4. That Laclede Gas Company, aforesaid, will hereinafter be referred to as the "Company," and the defendants, Local No. 8-6 Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194 Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109 Oil, Chemical and Atomic Workers of America (AFL-CIO), will hereinafter be referred to as the "Unions."

5. That on the ..... day of July, 1956, the em- [fol. 312] ployees of the Company who are members of the defendant Unions did fail, refuse and cease to work for and on behalf of the Company in its business as a public utility in distributing, selling and furnishing gas, aforesaid, and did go out on strike as against employment by, and performing work for and on behalf of, the Company in distributing, selling and furnishing said gas service, all as the result of a labor dispute;

6. That the acts, conduct and omissions of such employees in ceasing such work and labor and refusing to perform work and labor for the Company, as aforesaid, and in going out on strike, as aforesaid, were called, incited and supported by said defendant Unions, and such acts, conduct and omissions have threatened the effective operation in Missouri of the business of the Company as a public utility in distributing, selling and furnishing gas;

7. That such acts, conduct and omissions on the part of said employees and the defendant Unions threaten to interrupt the operation of the Company as a public utility in distributing, selling and furnishing gas, aforesaid, and as a result of such acts, conduct and omissions of the employees and the Unions and the threatened interruption, resulting therefrom, of the operation of the Company in distributing, selling and furnishing gas, aforesaid, the public interest, health and welfare of the people of the State of Missouri is jeopardized and threatened;

[fol. 313] 8. That pursuant to the matters and things alleged aforesaid, and because of the acts, conduct and omissions on the part of said employees and the Unions, as alleged and set forth in paragraphs 5, 6 & 7 hereof, Phil M. Donnelly, as Governor of the State of Missouri, on the 5th day of July, 1956, by virtue of the authority of Chapter 295 of the laws referred to aforesaid, did issue his Proclamation, a copy of which is attached hereto as Exhibit "A" and made a part hereof, wherein he declared that the public health and welfare are jeopardized because of the acts, conduct and omissions on the part of employees and the Unions, aforesaid, and wherein he did further declare that the exercise of the authority vested in him by Chapter 295, and particularly Section 295.180 of the Revised Statutes of Missouri, 1949, is necessary to insure the operation in Missouri of the Company;

9. That on the same day, to wit, July 5, 1956, Phil M. Donnelly, as Governor of the State of Missouri, by virtue of the authority of Chapter 295 of the Revised Statutes of Missouri, 1949, and especially Section 295.180 of the Revised Statutes of Missouri, 1949, did issue his Executive Order No. 1, a copy of which is attached hereto as Exhibit "B" and made a part hereof, wherein he took possession of the plants, equipment and all facilities of the Company, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at [fol. 314] 4:00 o'clock, P.M., Central Standard Time, July 5, 1956;

10. That on the 5th day of July, 1956, said Phil M. Donnelly, Governor of the State of Missouri, under and

by virtue of the authority vested in him by the Constitution of Missouri and statutes thereof, including Section 295.180 of the Revised Statutes of Missouri, 1949, in order to insure the continuation of the operation of the Company in Missouri, and because of the acts, conduct and omissions of the employees and the Unions, as stated and set forth in paragraphs 5, 6 & 7 hereof, did take immediate possession of the plants, equipment and facilities of said Laclede Gas Company for the use and operation thereof by the State of Missouri in the public interest;

11. That upon taking possession of the plants, equipment and facilities of the Company by Phil M. Donnelly, Governor of the State of Missouri, said employees and defendant Unions herein have continued the labor dispute, aforesaid, and have unlawfully continued to and do fail and refuse to perform work or labor for and on behalf of the State of Missouri in the distributing, selling and furnishing of gas, as aforesaid, through the plants, equipment and facilities of the Company to the customers of said Company and to the people generally in the State of Missouri; that thus and thereby has been caused an actual interruption of the distribution, sale and furnishing of gas to certain of the customers of the Company, and [fol. 315] that thus and thereby has been caused a threatened interruption of the effective operation of the business of the Company as a public utility in distributing, selling and furnishing gas in the State of Missouri, as aforesaid; that the threatened interruption of the furnishing of such gas service through the plants, equipment and facilities of the Company and the refusal of said employees to perform work and labor for and on behalf of the State of Missouri in the distribution, sale and furnishing of such gas jeopardizes and threatens the public interest, health and welfare of the State of Missouri and of the citizens and inhabitants thereof;

12. That the defendant Unions, by their officers and members, have jointly and severally called, incited, supported and participated in such strike and concerted refusal to work which resulted in a work stoppage at said Company which continued throughout July 6, 1956;

13. That Chapter 295 of the Revised Statutes of Missouri, 1949, and especially Section 295.200, makes such action on the part of the Unions in calling, inciting, supporting and participating in said strike and concerted refusal to work for the State of Missouri unlawful, and further provides that any labor organization or labor union which calls, incites, supports or participates in any strike or concerted refusal to work for the State after any plant, equipment or facility has been taken over by the State shall forfeit and pay to the State of Missouri, for the [fol. 316] use of the public school funds of the State, the sum of Ten Thousand Dollars ($10,000.00) for each day any work stoppage resulting from any strike which the labor organization or the labor union has called, incited or supported continues, and further provides that said money shall be recovered in a civil action in the name of the State and against the labor organization or labor union in its commonly used name.

Wherefore, in accordance with Section 295.200 of the Revised Statutes of Missouri, 1949, the plaintiff State of Missouri prays judgment against each one of the defendants herein, for the use of the public school fund of the State of Missouri, in the sum of Ten Thousand Dollars ($10,000.00) on account of the work stoppage throughout July 6, 1956, aforesaid, and for such other relief as the court should deem proper.

John M. Dalton, Attorney General of the State of Missouri, Supreme Court Building, Jefferson City, Missouri.

[fol. 317]

"Exhibit A" to Petition

Proclamation

Omitted. Side page 11, supra. Printed page 15.

[fol. 319]

"Exhibit B" to Petition

Executive Order No. 1

Omitted. Side page 13, supra. Printed page 17.

[fol. 322] Jul 20 1956 Ely, Ely & Voorhees enter their appearance as associate counsel for Pltf.

In Supreme Court of Missouri

Motion to Dismiss Defendants' Petition for a Declaratory Judgment—Filed July 31, 1956

Now comes the plaintiff, State of Missouri, and moves the Court to dismiss defendants' counter-petition for a declaratory judgment filed herein, on the grounds that:

1. Said petition for a declaratory judgment does not state a claim upon which relief may be granted;

2. Said petition for a declaratory judgment does not allege facts showing the existence of a justifiable controversy between defendants herein and this plaintiff;

3. There is a defect of parties to said purported action for a declaratory judgment, in that Phil M. Donnelly, Governor of the State of Missouri, is, under the allegations of defendants' petition for declaratory judgment, a necessary party to the adjudication of the issues attempted to be raised therein, and said Phil M. Donnelly is not a party to such action;

4. There is presently pending in Division 3 of this [fol. 324] Court a cause of action between the same parties herein for the same cause, to wit, State of Missouri, Plaintiff v. Local No. 8-6 Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., Defendants, No. 92785-D, in which the identical issues attempted to be raised by the defendants in the counter-petition herein have been raised by the same parties and in the same manner.

Wherefore, plaintiff prays the order of this Court dismissing defendants' counter-petition for a declaratory judgment, and for such other relief as to the Court may appear proper in the premises.

IN SUPREME COURT OF MISSOURI

ANSWER AND PETITION FOR DECLARATORY JUDGMENT—
Filed September 19, 1956

Now come defendants, Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local No. 8-194, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Local No. 8-109, Oil, Chemical and Atomic Workers International Union, AFL-CIO, the defendants in the above entitled cause, sometimes referred [fol. 325] to in plaintiff's petition as the "Unions", and for answer to plaintiff's petition filed herein defendants state as follows:

1. Defendants deny that they are or ever were incorporated voluntary associations of persons as alleged in Paragraph 1 of plaintiff's petition. Defendants state that each of them is a voluntary unincorporated association of persons and that each of them is a labor union or labor organization within the meaning of the Labor-Management Relations Act, 1947.

2. Defendants state that they are the collective bargaining agents for most of the employees of the Laclede Gas Company, in accordance with certifications issued by the National Labor Relations Board pursuant to the provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended. Local 8-6 has been duly certified as the exclusive bargaining agent for the purposes of bargaining in respect to rates of pay, wages, hours of work and other conditions of employment for the Company's employees in the Manufacturing Department, Service and Installation Department, Street Department, Meter Reading Department, and the departments designated respectively as Store Room, Garage, Meter Repair Shop and Building Service, all as more particularly described in and on pages 63 to 74, inclusive, in the Labor Agreement hereto attached and marked and identified as Exhibit "A", said certification having been made by the National Labor Relations Boards on November 24, 1948, as amended by the new certification [fol. 326] made by said National Labor Relations Board on

September 27, 1955 in Case No. 14-RE-18. Said Local 8-194 has been duly certified as the exclusive bargaining agent for the purposes of bargaining in respect to rates of pay, wages, hours of work and other conditions of employment for the Company's office and clerical employees and those others specifically mentioned in the following departments: Accounting, Cashier and Mailing, Collection and Credit, Customers' Accounting, Customers' Advisers, Payroll, Purchasing, Stationery and Printing, Sales and Sales Engineers, Meter Reading, Manufacturing, including Assistant Chemists and Clerks, Service and Installation, Drafting, Streets, Telephone Contact, including PBX Operators, and the departments designated respectively as Control, Store Room, Garage, Meter Repair Shop, Brentwood Office and Budget Department (Budget Clerk only); said certification of Local 8-194 was duly made by the National Labor Relations Board on June 8, 1944 and thereafter duly amended in Case No. 11-R-982 on September 27, 1955. Local 8-109 was duly certified by said National Labor Relations Board as the sole and exclusive collective bargaining Agent for the employees represented by it following an election duly held and conducted by said National Labor Relations Board. Pursuant to said certifications the defendants are and at all times material hereto have continued to be the sole and exclusive collective bargaining agents of said above described employees of Laclede Gas [fol. 327] Company representing approximately 2200 employees of said Laclede Gas Company engaged directly in the manufacturing and distribution of the gas sold by said Company and in the construction, maintenance and repair of the plants, properties and facilities of said Company and in the performance of the office and clerical duties and all other activities related to the foregoing.

3. Defendants admit the allegations contained in Paragraph 3 of plaintiff's petition, and for further answer defendants state that Laclede Gas Company operates a gas utility engaged in the distribution and sale of natural gas throughout the City of St. Louis and approximately 130 square miles of the adjacent suburban areas in St. Louis County, Missouri. The Company sells natural gas to busi-

nesses and enterprises directly engaged in the production of goods that move in interstate commerce. During the year ending December 31, 1955 the Company had Total Operating Revenues of $41,416,789, all of which, except for $724,937, was derived from the sale of gas; that in that same period Laclede Gas Company sold gas to industrial consumers in an amount of $4,819,988, practically all of which was sold to customers engaged in the production of goods for commerce, and in the same period an additional amount of $1,910,038 of natural gas was sold to other industrial users on an interruptable basis; and all of said customers purchasing the said gas were engaged in the production of goods for commerce. During the calendar year 1955 the Company purchased all of its natural gas [fol. 328] from Mississippi River Fuel Corporation, which supplied said gas from the Carthage Field of Texas into Perryville, Louisiana, and thence to the City of St. Louis and environs. Said purchases of gas by the Company during the year 1955 and shipped to it from outside the State of Missouri amounted to an aggregate of $16,156,481. The Company is engaged in activities affecting commerce and is and was at all times herein mentioned engaged in interstate commerce within the meaning of the Labor-Management Relations Act, 1947, and is subject to the jurisdiction of the National Labor Relations Board, which has consistently and regularly asserted and exercised jurisdiction over it and the defendants herein named.

4. Defendants admit the allegations contained in Paragraph 5 of plaintiff's petition, and for further answer defendants state that each of the Local Unions has for many years had written collective bargaining contracts with Laclede Gas Company, covering the wages, hours and conditions of employment of the employees of said Company represented by these defendants; that the last contracts executed by and between these defendants and said Laclede Gas Company all expired by their terms on June 30, 1956; that these defendants have in good faith been attempting to bargain with said Laclede Gas Company prior to and since June 30, 1956 for the negotiation and execution of a new collective bargaining contract governing the wages,

hours and conditions of employment of the workers repre-
[fol. 329] sented by said defendants, but no new agreement has been entered into nor executed by the parties.

5. Further answering, your defendants state that each of them did more than sixty days prior to the expiration date of their last contracts with the Company, give notice of changes desired by them in the terms and conditions of their collective bargaining contracts, all as required by the provisions of the Labor-Management Relations Act, 1947. In like manner said Laclede Gas Company, in purported compliance with the Labor-Management Relations Act, 1947 to which it was and is subject, gave written notice to these defendants purporting to terminate its said collective bargaining contracts with these defendants as of June 30, 1956.

6. Due notice prepared in the form required and in compliance with Section 8(d)(3) of the National Labor Relations Act was served on the Federal Mediation and Conciliation Service of changes desired by these defendants in their collective bargaining contracts with Laclede Gas Company, and at the same time the State Board of Mediation of the State of Missouri was served with notice of requests for changes in the collective bargaining agreement expiring June 30, 1956 and of the existence of a labor dispute between these defendants and Laclede Gas Company.

7. Defendants deny the allegations of Paragraphs 6 and 7 of plaintiff's petition as set out therein, and aver that [fol. 330] following the attempts of these defendants and their officers and representatives to bargain in good faith with Laclede Gas Company and the inability to arrive at acceptable terms and conditions to be incorporated in new collective bargaining contracts between these defendants and Laclede Gas Company, the memberships of each of the defendants did, on June 25, 1956, vote to and did authorize a peaceful strike against said Laclede Gas Company to enforce the demands of these defendants and their memberships for increased wages and desired changes in the hours and working conditions of their employment with

said Company, and to prevent Laclede Gas Company from instituting certain changes in working practices and conditions that would adversely affect the wages, positions and security of the memberships.

8. Further answering, the defendants state that on the expiration of their respective contracts with the Laclede Gas Company on June 30, 1956 the membership of these defendants did, on July 1, 1956, enter upon a peaceful strike against said Laclede Gas Company for the purposes aforesaid.

9. Defendants neither admit nor deny the allegations contained in paragraph 8 of plaintiff's petition and call upon plaintiff for strict proof thereof, but defendants deny all of the statements, allegations and declarations contained in Exhibit "A" attached to plaintiff's petition.

10. Defendants neither admit nor deny the allegations [fol. 331] contained in Paragraph 9 of plaintiff's petition and call upon plaintiff for strict proof thereof, but defendants deny all the allegations, statements and declarations contained in Exhibit "B" attached to plaintiff's petition.

11. Defendants deny all the allegations contained in Paragraphs 10, 11 and 12 of plaintiff's petition.

12. Defendants deny all of the allegations contained in Paragraph 13 of plaintiff's petition and the conclusions therein, except as to the specific statutes and the exact language thereof, of which the Court will take judicial notice.

13. For further answer defendants deny that the defendant Unions or any of their members are now or have ever been on strike against the State of Missouri and specifically deny the allegations in plaintiff's petition that they or any of their members now or at any time have or "do fail or refuse to perform work or labor for and on behalf of the State of Missouri in the distributing, selling and furnishing of gas." Defendants state that the agent allegedly designated by Phil M. Donnelly, Governor of the State of Missouri, has expressly disclaimed any of the

members of the defendant Unions as his employees or as employees of the State of Missouri and has expressly denied that any of the members of these defendants are employees of or stand in the relation of master and servant to the State of Missouri or Phil M. Donnelly, as Governor of the State of Missouri.

[fol. 332] 14. For further answer these defendants state that all of said proclamations and actions of said Phil M. Donnelly, Governor of the State of Missouri, and his agent, Daniel C. Rogers, acting pursuant thereto, are in derogation of the rights of these defendants and their membership under the Constitution of the United States and Article I, Section 8 and Article VI of said Constitution and the Thirteenth and Fourteenth Amendments to the Constitution of the United States, and in derogation of the rights of these defendants under the Constitution of the State of Missouri and Sections 2, 8, 9, 10 and 29 of Article I of said Constitution, and in deprivation of the rights of these defendants and all members of these defendant Local Unions and attempts to deny and to withhold from them the protections and benefits of the Labor-Management Relations Act, 1947, as amended (61 Stat. 136 (1947) 29 U.S.C. 141 (Sup. 1950)). Defendants state that they are and were at all times herein mentioned employees only of the Laclede Gas Company and at no time were they or were they intended to be by those enforcing the alleged act of seizure the employees of the State of Missouri or any political subdivision thereof in the operation of said Laclede Gas Company; that said alleged seizure by the Governor of the State of Missouri is purely nominal and did not, nor did it purport to change the status of the membership of these defendant Unions as employees of Laclede Gas Company, which at all times remained in full possession of all of its property and exercised dominion [fol. 333] and control over all of its employees in the operation of said properties. Your defendants further state that said purported seizure and all actions taken under and pursuant thereto is and was intended only to deprive their members, who are employed by Laclede Gas Company, of the benefits and protection of the Labor-

Management Relations Act, 1947; that the said actions and the statute under which the same were taken attempt to abrogate altogether the right of the members of these defendant Unions to take collective action in their mutual aid and protection which is guaranteed to them under the Labor-Management Relations Act, 1947, and to deprive them of the benefits and protections of said Act; that said statute and all actions taken thereunder are in conflict with the exercise by the members of the defendant Local Unions of their Federally protected labor rights.

15. The issuance of said Proclamation and Executive Order and all said described acts and things done and performed by said Phil M. Donnelly, as Governor of the State of Missouri, and his agent, Daniel C. Rogers, were carried out pursuant to the provisions of Chapter 295 of the Revised Statutes of Missouri, 1949, hereinafter sometimes referred to as the "King-Thompson Law."

16. Defendants state that the said King-Thompson Law is unconstitutional and invalid and all actions taken thereunder by Phil M. Donnelly, as Governor of the State of [fol. 334] Missouri, are unlawful, invalid and without any force or effect for the following reasons:

(a) Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act of 1935, as amended by the Labor-Management Relations Act of 1947, and therefore is unconstitutional and invalid because it violates Section 8 of Article I and Article VI of the Constitution of the United States.

(b) Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act and the Labor-Management Relations Act, 1947 and interferes with the purposes of said Acts to promote voluntary labor agreements through free collective bargaining.

(c) Section 295.200 of said statute, which makes it unlawful for employees of public utilities to strike, is in conflict with the Labor-Management Relations Act of 1947 and Section 13 thereof, and is in violation of Article VI of the Constitution of the United States.

(d) Section 295.180 of said Law, providing that a public utility may be seized on the terms and conditions therein set forth is in conflict with the Labor-Management Relations Act, including, but not limited to Section 13 thereof.

(e) Sections 295.120 to 295.170, inclusive, R. S. Mo., 1949, providing for public hearing panels, is in conflict with the Labor-Management Relations Act, 1947.

[fol. 335] (f) Section 295.200 of said Revised Statutes of Missouri, 1949, providing penalties for employees who strike in economic strikes and penalizing public utilities which refuse to bargain collectively in good faith with employees, is in conflict with and in violation of the National Labor Relations Act, including, but not limited to Sections 2(3), 7, 8 and 13 of said Labor Management Relations Act of 1947, and attempts to legislate on a subject and in an area fully preempted by Federal Law.

(g) Chapter 295, R. S. Mo., 1949, by its substance, terms and the purported effect thereof, is void on its face and invalid as being in conflict with Article I, Section 29 of the Constitution of Missouri, 1945, and the rights guaranteed to workers thereunder.

(h) Chapter 295.090, R. S. Mo., 1949, constitutes a denial of the right of free collective bargaining by utility employees through representatives of their own choosing, and is unconstitutional and void under Article VI of the Constitution of the United States as being in conflict with the Labor-Management Relations Act.

(i) Chapter 295, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 1 of Article II of the Constitution of Missouri, 1945, and that by the unlawful delegation of legislative powers.

[fol. 336] (j) Sections 295.120 to 295.180, inclusive, R. S. Mo., 1949, are and constitute unlawful delegations of legislative power and authority to the Governor and to the members of the panels provided for therein.

(k) Section 295.200(1), R. S. Mo., 1949, by its terms, substance and effect, on its face is void and violates the

provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First and Fourteenth Amendments to the Constitution of the United States, and is a denial of freedom of speech and freedom of assemblage and equal protection of the laws, in violation of said Constitution.

(l) Section 295.090, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Sections 2, 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the provisions of the First and Fourteenth Amendments of the Constitution of the United States and is in conflict with the Labor-Management Relations Act of 1947.

(m) Section 295.180, R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of Section 13 of Article I of the Constitution of Missouri, 1945, and violates the provisions of Section 10 of Article I of the Constitution of the United States.

(n) Section 295.200, R. S. Mo., 1949, by its terms, substance and effect, is void on its face, and violates the [fol. 337] provisions of Sections 8, 9 and 10 of Article I of the Constitution of Missouri, 1945, and the First, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and is in conflict with the provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended.

(o) Said Section 295.200, R. S. Mo., 1949, is a denial of the freedom of speech, freedom of assemblage and equal protection of the laws; the penal provisions thereof provide for imposition of excessive fines and the terms and substance thereof impose a form of compulsory service or involuntary servitude.

(p) Said Section 295.200(2), R. S. Mo., 1949, is an attempt to take property without due process of law, interferes with the freedom of contract and denies to all employees of utilities the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

(q) Chapter 295, R. S. Mo., 1949, is in conflict with various provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act, 1947, as amended, in that it attempts to deny and take away rights guaranteed by Sections 2(3), 7, 8 and 13 and other provisions of said Acts.

(r) Chapter 295, R. S. Mo., 1949, is unlawful and invalid in its entirety, because it attempts to legislate and operate [fol. 338] in a field and cover activities fully preempted by and covered by existing Federal Law enacted by Congress pursuant to authority of the Constitution of the United States.

17. The Proclamation and Executive Order issued by said Phil M. Donnelly, Governor of the State of Missouri, and the acts done and performed by said Phil M. Donnelly and his agent, Daniel C. Rogers, acting unlawfully and improperly as hereinabove set forth, affect these defendants and each of their individual members adversely as employees of Laclede Gas Company and as members of these defendant Local Unions in denying them the enjoyment of their rights and privileges as employees and depriving them of the protection of the right of free collective bargaining guaranteed to each of them as set forth above, and said Proclamation, Order and acts were, are and constitute a continuing threat to the enjoyment of said rights and privileges of these defendants and constitute a continuing impairment of the constitutional rights of these defendants not only in the present dispute between these defendants and Laclede Gas Company, but in all future and continuing collective bargaining and collective bargaining relations affecting these defendants and all others similarly situated. Defendants further state that so long as the Governor of the State of Missouri is free or deems himself to be free to exercise the authority and to enforce the provisions, prohibitions and penalties provided in Chapter [fol. 339] 295, R. S. Mo., 1949, at this time or at any time in the future, with respect to the activities of Laclede Gas Company or any other company or industry engaged in interstate commerce, or which affect interstate commerce,

there cannot be the full freedom of association among the employees affected nor any equality of bargaining power, and there is and will continue to be a constant and continuing interference with and impediment to free collective bargaining as provided for and required by and protected under the provisions of the Labor-Management Relations Act, 1947, as amended; that in and under these circumstances the defendants and each of them have suffered and will continue to suffer great and irreparable injury.

Wherefore, defendants pray for judgment in favor of the defendants and for their costs, and for all other and further proper orders herein.

PETITION FOR DECLARATORY JUDGMENT

18. Defendants re-adopt and incorporate herein by reference all the allegations contained in Paragraphs 1 through 17, inclusive, as hereinabove set out.

19. These defendants further state that for all the reasons set forth above and by reason thereof a continuing dispute exists affecting the defendants and each of them and all of their members, and the defendants and each of them and all of their members are and will continue to be [fol. 340] affected adversely by the acts, conduct and things done and performed by said Phil M. Donnelly, as Governor of the State of Missouri, as hereinabove set out, pursuant to and under the alleged authority of Chapter 295, R. S. Mo., 1949. For the reasons set forth hereinabove a serious doubt exists concerning the validity, legality and constitutionality of Chapter 295 of the Revised Statutes of Missouri, 1949, and the various Sections thereof, under which the acts of said Phil M. Donnelly herein complained of have taken place and occurred.

20. Defendants further allege that said Phil M. Donnelly, as Governor of the State of Missouri, threatens to continue to enforce all the provisions of Chapter 295, R. S. Mo., 1949, including, without limiting the generality thereof, Sections 295.180 and 295.200, to the detriment, loss and damage of all the defendants herein and their members. As a result thereof, the defendants and their members are

uncertain and do not and cannot know what is the status of their employment or other status under the said law, nor the effects upon them, or any of them, of the acts, conduct and things done and performed by Phil M. Donnelly, as Governor of the State of Missouri, and the agents designated and appointed by him under the alleged authority of and pursuant to the said statute, and plaintiffs cannot be fully nor adequately apprised thereof without a declaratory judgment of this Court relating to the validity of said Chapter 295 and every portion thereof.

[fol. 341] Wherefore, defendants pray for a judgment and decree of this Court construing Chapter 295, R. S. Mo., 1949, and the various Sections thereof, declaring the rights and status of these defendants and all others similarly situated thereunder, and further declaring that said Chapter 295 and all portions thereof are invalid, unenforceable, unconstitutional and in violation and derogation of the Constitution of the United States and the sections and portions thereof specifically set forth hereinabove, in violation of the Constitution of the State of Missouri and the sections and provisions thereof identified and set out in detail hereinabove, and further declaring that all acts performed by said Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are invalid, void, unenforceable, and without any force or effect, and defendants further pray for all other and proper relief.

/s/ Morris J. Levin, 1125 Arcade Building, St. Louis 1, Mo., MAin 1-8363, *Attorney for Defendants.*

Mar 1 1957 Counter petition having been filed presenting equitable matter, cause ordered transferred to Equity Div. #3.

[fol. 341a] Exhibit "A" to answer and petition for declaratory judgment—"Labor Agreement between Laclede Gas Company and Oil, Chemical and Atomic Workers International Union Local Union No. 8-6, Effective July 1, 1955" (omitted in printing).

[fol. 342]

Mar 8 1957 By Leave, Pltf's. Amended Motion to Dismiss Defts.' Counter-Petition for a Declaratory Judgment filed.

Defts.' Atty. acknowledges receipt of a copy of said motion and waives all exceptions as to the time of filing.

IN SUPREME COURT OF MISSOURI

AMENDED MOTION TO DISMISS DEFENDANTS' COUNTER PETITION FOR A DECLARATORY JUDGMENT —Filed March 8, 1957

Now comes the plaintiff, State of Missouri, and moves the Court to dismiss defendants' counter petition for a declaratory judgment filed herein, on the grounds that:

1. The same matters asserted in defendants' counter petition herein have already been adjudicated by this Court in the case of State of Missouri, Plaintiff, v. Local No. 8-6 Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., Defendants, No. 92,785-D, in which the State of Missouri was plaintiff and all defendants herein were defendants, and in which the identical issues attempted to be raised by the defendants in the counter petition herein were raised by the same parties and in the same manner and were decided by the Court. A copy of the plaintiff's petition in said cause is attached hereto and made a part hereof as if more fully set out at length herein and is [fol. 343] marked "Exhibit A." A copy of said counter petition in said cause is attached hereto and made a part hereof as if more fully set out at length herein and is marked "Exhibit B" and "Exhibit B-1." A copy of the order and judgment of the Court on said counter petition for a declaratory judgment in said cause is attached hereto and made a part hereof as if more fully set out at length herein and is marked "Exhibit C."

2. The defendants in this cause have, by their answer to plaintiff's petition herein, placed in issue all of the mat-

ters attempted to be raised by said counter petition for a declaratory judgment. Said issues can and will be adjudicated under the plaintiff's petition and the defendants' answer herein, and therefore no action for a declaratory judgment based upon the same matters may be maintained.

3. The matters raised by the defendants' counter petition for a declaratory judgment herein are involved in the previously pending action filed by the plaintiff herein, and therefore no action for a declaratory judgment will lie to declare rights as to matters involved in the prior pending action brought by the plaintiff herein.

4. Said petition for a declaratory judgment does not state a claim upon which relief may be granted.

5. Said petition for a declaratory judgment does not allege facts showing the existence of a justiciable controversy between the plaintiff herein and these defendants.

[fol. 344] 6. There is a defect of parties to said purported action for a declaratory judgment, in that the Governor of the State of Missouri is, under the allegations of defendants' petition for a declaratory judgment, a necessary party to the adjudication of the issues attempted to be raised therein and said Governor has not been made a party to such action.

Wherefore, plaintiff prays the order of this Court dismissing defendants' counter petition for a declaratory judgment, and for such other relief as to the Court may appear proper in the premises.

[fol. 345] "Exhibit A" to amended motion, etc., "Petition for injunction," omitted. Side page 1 *supra* (printed page 5).

[fol. 360] ("Exhibit A", Proclamation dated July 5, 1956, attached to the foregoing "Petition for Injunction", is copied herein in exact language in this transcript beginning on page 15 hereof.)

("Exhibit B", Executive Order No. 1, dated July 5, 1956, attached to the foregoing "Petition for Injunction", is copied herein in exact language in this transcript beginning on page 17 hereof.)

[fol. 361] "Exhibit B" to Amended Motion, etc., "Defendants' Return to Order to Show Cause and Motion to Dismiss," omitted. Side page 15 *supra* (printed page 19).

[fol. 379] "Exhibit B-1" to Amended Motion, etc., "Defendants' Amended Return to Order to Show Cause, Answer and Petition for Declaratory Judgment," omitted. Side page 258 *supra* (printed page 271).

[fol. 384] "Exhibit C" to Amended Motion, etc., "Order of Court," omitted. Side page 285 *supra* (printed page 295).

[fol. 386]

Apr 5 1957 Pltf's. Amended Motion to Dismiss Defts.' Counter-Petition for a Declaratory Judgment argued; Pltf. granted 10 days—Defts. granted 14 days thereafter, and Pltf. granted 7 days thereafter to furnish memos.; upon receipt of last memo. by Clerk, said motion to be taken as submitted.

Jun 20 1957 By Leave, Defts. granted add'l. time until end of June 25, 1957, to submit Memo.

Jul 16 1957 Last memo having been received, motion to dismiss taken as submitted.

IN SUPREME COURT OF MISSOURI

ORDER SUSTAINING PLAINTIFF'S AMENDED MOTION TO DISMISS DEFENDANTS' COUNTER PETITION FOR A DECLARATORY JUDGMENT—August 7, 1957

"The Court having heard and duly considered the plaintiff's amended motion to dismiss defendants' counter-petition for declaratory judgment, heretofore filed and

submitted herein and being sufficiently advised of and concerning the premises, doth order that said amended motion be and the same is hereby sustained and doth order that defendants' counter-petition for declaratory judgment be and the same is hereby dismissed, with prejudice."

[fol. 387]

IN SUPREME COURT OF MISSOURI

DEFENDANTS' MOTION FOR NEW TRIAL —Filed August 17, 1957

Now come the defendants herein, and respectfully move this Honorable Court to set aside and hold for naught the Order of the Court made and entered in this cause on August 7, 1957 dismissing Defendants' Counter Petition for a Declaratory Judgment and for a new trial herein, for the following reasons:

1. The Court erred in issuing its order dismissing the Counter Petition for a Declaratory Judgment, for the reason that said order is not supported by the evidence in this cause.

2. The Court erred in issuing its order aforesaid for the reason that said order is not supported by the greater weight of the evidence in this cause.

3. The Court erred in issuing its order aforesaid for the reason that said order is not supported by the law under the evidence in this cause.

4. The Court erred in issuing its said order aforesaid for the reason that said order is contrary to the law and this Court was without jurisdiction or authority to enter the same.

5. The Court was without authority to dismiss the De-
[fol. 388] fendants' Counter Petition for a Declaratory Judgment with prejudice.

6. The Court erred in issuing and entering its order aforesaid, because the judgment of the Circuit Court of the City of St. Louis on the Petition for Declaratory Judgment in case No. 92,785-D in said court is not res adjudicata of

the matters raised by the defendants in their Petition for Declaratory Judgment in the present action.

7. The Court erred in issuing and entering its order aforesaid, because there is no identity of the thing sued for on Defendants' Petition for a Declaratory Judgment in this cause and in Case No. 92,785-D in the Circuit Court of the City of St. Louis.

8. The Court erred in issuing and entering its order of dismissal aforesaid, because there is no identity of the cause of action between the Defendants' Petition for Declaratory Judgment in the instant cause and in Case No. 92,785-D in the Circuit Court of the City of St. Louis.

9. The Court erred in issuing and entering its order of dismissal aforesaid, because there is no identity of the persons and parties to the cause of action between the Defendants' Petition for Declaratory Judgment in the instant cause and in Case No. 92,785-D in the Circuit Court of the City of St. Louis.

10. The Court erred in issuing and entering its order [fol. 389] of dismissal aforesaid, because there is no identity of the quality of the person or persons for or against whom the claim is made between the Defendants' Petition for Declaratory Judgment in the instant cause and in case No. 92,785-D in the Circuit Court of the City of St. Louis.

11. The Court erred in issuing and entering its order of dismissal aforesaid, because the Court-Petition for a Declaratory Judgment filed by defendants raises other and additional issues than those set out in the Answer to Plaintiff's Petition, and the judgment of this Court on the matters raised in Plaintiff's petition and Defendants' Answer will not adjudicate nor dispose of the additional matters pleaded in Defendants' Petition for a Declaratory Judgment.

12. The Court erred in issuing and entering its order of dismissal aforesaid, because the Governor of Missouri is not an essential party to the cause of action for a declaratory judgment respecting the constitutionality of the King-Thompson Act (Chapter 295, Revised Statutes of Missouri,

1949), and the validity of the actions taken thereunder by the Governor of Missouri and his agent.

13. The Court erred in issuing and entering its order of dismissal aforesaid, because all the necessary parties were before this Court for a decision and ruling on Defendants' Petition for a Declaratory Judgment.

Wherefore, defendants respectfully pray that the Court [fol. 390] set aside and hold for naught its Order of August 7, 1957 and entered on that date sustaining the Plaintiff's Motion to Dismiss Defendants' Counter Petition for a Declaratory Judgment and dismissing said Counter-Petition for Declaratory Judgment, or, in the alternative, defendants move the Court to sustain this Motion for New Trial, for all the reasons set forth hereinabove.

Nov 1 1957 Defts.' Motion for new trial, by agreement, submitted on briefs heretofore filed with the Court.

In Supreme Court of Missouri

Order Overruling Defendants' Motion for New Trial —November 7, 1957

"The Court having seen and examined and duly considered the defendants' motion for new trial, heretofore filed and submitted herein, and being sufficiently advised thereof, doth order that said motion be and the same is hereby overruled."

Nov 9 1957 $10.00 Deposited as Docket Fee to Supreme Court. Defts.

[fol. 391]

In Supreme Court of Missouri

Notice of Appeal—Filed November 9, 1957

Notice hereby given that Defendants above-named, hereby appeal to the Supreme Court of the State of Missouri

from the Order and Judgment of the Court entered on August 7, 1957, sustaining with prejudice Plaintiff's Motion to Dismiss Defendants' Counter-Petition for a Declaratory Judgment, and the Order and Judgment of the Court entered on November 7, 1957, overruling Defendants' Motion for a New Trial.

Dated November 8, 1957.

Nov 21 1957 Clerk's certificate showing mailing of notice of appeal to the parties therein named, filed (omitted in printing).

[fol. 392]

Jan. 21 1958 On oral motion of Defts. and for good cause shown, said Defts. granted 90 days add'l. time from the expiration of the original 90 days, to wit: up to May 8, 1958 to file transcript of record on appeal.

[fol. 393]

APPROVAL OF TRANSCRIPT

This Transcript of the Record on Appeal is hereby approved this 7th day of May, 1958.

s/ John M. Dalton, Attorney General of Missouri, /s Robert R. Welborn, Assistant Attorney General, Supreme Court Building, Tele. 6-7131, Jefferson City, Missouri, Ely, Ely and Voorhees, /s/ Wayne Ely, 2150 Railway Exchange Building, St. Louis 1, Missouri, Attorneys for Plaintiff-Respondent.

s/ Morris J. Levin and /s/ Donald Siegel, 1125 Arcade Building, 912 Olive Street, St Louis 1, Missouri, Attorneys for Defendants-Appellants.

[fol. 394] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 396] [File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

EN BANC

No. 45,869

STATE OF MISSOURI, Respondent,

vs.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al., Appellants.

Appeal From the Circuit Court of the City of St. Louis

Honorable Ivan Lee Holt, Jr., Judge.

OPINION—September 29, 1958

The defendants have appealed from a judgment of the Circuit Court of the City of St. Louis enjoining them from continuing and participating in a work stoppage and strike against the Laclede Gas Company or the State of Missouri, the plaintiff in the action. The judgment also declared the Act upon which the action is based, Ch. 295, RSMo 1949, commonly known as the King-Thompson Act, to be valid and constitutional. The defendants are officers and members of Local Unions Nos. 8-6, 8-109 and 8-194 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. Laclede Gas Company, a Missouri corporation, is an operating gas utility engaged in the distribution and sale of gas in the metropolitan area comprising the City of St. Louis and St. Louis County.

On July 1, 1956, Laclede had approximately 2500 employees. Approximately 1700 production and distribution workers were represented by Local 8-6. About 100 foremen were represented by Local 8-109, and about 400 clerical workers by Local 8-194. At all times herein mentioned, these unions were duly certified by the National Labor Relations Board as representatives of such employees for the purpose of collective bargaining.

[fol. 397] The expiration date of the labor agreements between Laclede and its employees was June 30, 1956, at midnight. More than sixty days before the expiration date, the employees, through their representatives, notified the company of their desire to modify the agreements. Notice of the labor dispute also was given to the Federal Mediation and Conciliation Service and to the Missouri State Board of Mediation. The labor dispute involved wages, vacations, making of riser connections and other matters. Negotiations for new labor agreements were initiated between the three local unions and Laclede and were continued through June 30, 1956. When the old contract expired without a new one being consummated, approximately 1800 employees, represented by these three unions, went on strike pursuant to a strike vote previously taken. The strike began July 1, 1956, and picket lines were set up at all offices and locations of the company, about 10 in number. About 300 supervisory employees who were not members of these unions remained on duty and undertook to continue furnishing gas to the customers, but service could not be maintained for reasons hereinafter more fully discussed.

On the afternoon of July 5, 1956, the Honorable Phil M. Donnelly, governor of the State of Missouri, issued a Proclamation and two Executive Orders which were served upon the defendants and the managing officers of Laclede. This Proclamation and the Orders were designed to effect the seizure of the utility and continue its operation in the public interest by virtue of the authority vested in the governor by the Constitution and the laws of Missouri, particularly § 295.180 of the King-Thompson Act. The Proclamation declared, after investigation, it was the governor's opinion that "the public interest, health and welfare are jeopardized" because of the interruption of the operation of the utility as a result of the labor dispute and strike and, further, that the exercise of the authority vested in the governor by § 295.180 was necessary to insure the continued operation in Missouri of the public utility.

[fol. 398] Executive Order No. 1 stated that the governor took possession of "the plants, equipment, and all facilities of the Laclede Gas Company, located in the State of Mis-

souri, for the use and operation by the State of Missouri in the public interest," effective as of 4 o'clock p.m. July 5, 1956.

The governor's Executive Order No. 2 provided:

"(1) That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is hereby authorized and directed to take possession of the plants, equipment and all facilities of the Laclede Gas Company in the State of Missouri or such parts of each of said plants, equipment and facilities as may be necessary for the purpose of carrying out the provisions of this Order, and to effect my Proclamation and Executive Order No. 1 declaring the public interest, health and welfare jeopardized, in order to insure that the said utility above mentioned is effectively operated in the interest of the people of this State to the end that they may have the benefit of necessary and essential public utility services.

"(2) Said Daniel C. Rogers shall exercise the aforesaid authority as my agent forthwith, and he shall continue to exercise the aforesaid authority as my agent until and unless otherwise directed by me.

"(3) All rules and regulations of the aforesaid utility governing the internal management and organization of the company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri."

The employees on strike did not return to work when the governor's Proclamation and Executive Orders were issued and served upon their representatives. On July 9, 1956, the State of Missouri, in its sovereign right, filed suit seeking to restrain and enjoin the defendants from continuing the strike, basing its action upon Chapter 295 of the Revised Statutes of Missouri, and particularly § 295.180 and [fol. 399] § 295.200 and the governor's Proclamation and Executive Orders issued pursuant thereto. The defendants' pleadings, inter alia, attacked the constitutionality of the King-Thompson Act and the validity of the Proclamation and Executive Orders of the governor and of his agent

acting thereunder and also sought a declaratory judgment that Chapter 295 was unconstitutional.

Trial of the case began on July 11, 1956, and concluded on July 13, 1956. The Court adjudged and decreed that the injunction be issued as prayed and held Chapter 295 was not unconstitutional and that the Proclamation and Executive Orders issued by the governor, pursuant to the authority conferred upon him by Section 295.180, were valid and enforceable. On July 14, 1956, the day after judgment was rendered, the striking employees returned to work.

Amici curiae urge us to dismiss the appeal on the ground the case is now moot. Going outside the record as permitted for this purpose, State ex rel. Donnell v. Searcy, 347 Mo. 1052, 152 S.W.2d 8, 10(2), they assert that Laclede and its employees signed a labor agreement on August 10, 1956, and that the governor terminated his seizure of the utility on October 31, 1956, which was, however, after this appeal was taken. They contend that the injunction having expired by its own terms the appeal should be dismissed in accordance with our practice of refusing to pass on moot questions. Neither the plaintiff nor the defendants join in this request.

Among other cases, the amici curiae cite Preisler v. Doherty, 364 Mo. 596, 265 S.W.2d 404, 407 (4), which holds: "A question is moot when the question presented for decision seeks a judgment upon some matter which if judgment were rendered could not have any practical effect upon any then existing controversy." One factor to be considered is that seizures of utilities in similar situations are likely to occur again and it is in the public interest that the question of their validity be determined. Moreover, we know from our own records, No. 46,664, State of Missouri vs. Local [fol. 400] No. 8-6 et al., that another action, growing out of the same transaction, is pending in the trial court against these defendant unions to assess monetary penalties pursuant to Section 295.200(3).

Where the matters connected with or growing out of the original cause have not been fully and finally disposed of and the questions presented are of public importance and

likely to recur in the courts of the state, an appeal need not be dismissed as being moot although the immediate controversy has ceased to exist. State ex rel. Atchison, T. & S.F. Ry. Co. v. Trimble, 254 Mo. 542, 163 S.W. 860, 862(1). See also Stegmann v. Weeke, 279 Mo. 131, 214 S.W. 134, 135(2); Morrison v. Hess, Mo., 231 S.W. 997, 999(1); Missouri Electric Power Co. v. Smith, 348 Mo. 738, 155 S.W.2d 113, 117(1); State ex rel. Chubb v. Sartorius, Mo., 175 S.W.2d 783, 785(1); Morrison v. State, Mo. App., 252 S.W.2d 97, 100(2). This seems to be consistent with the practice in federal courts. Walling v. Helmerich & Payne, Inc., 323 U.S. 37, 43, 65 S.Ct. 11, 89 L.Ed. 29; Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U.S. 498, 514-516, 31 S.Ct. 279, 55 L.Ed. 310. We believe a justiciable controversy is presented in the circumstances of this case. We reject the suggestion that the appeal should be dismissed as moot.

Ninety-nine per cent of the product distributed by Laclede was natural gas, all of which came from Louisiana or Texas. Natural gas was taken from pipe lines and put directly into the distribution system or in storage. In addition to other methods, Laclede maintains an underground storage reservoir in St. Louis County capable of accommodating in excess of two billion feet of gas. Large quantities of pipe fittings, meters and other supplies and products were also purchased by Laclede from outside the State of Missouri. For the year ending December 31, 1955, Laclede's gross revenue was in excess of $41,000,000. The defendants contend, and properly so, that Laclede Gas Company was engaged in interstate commerce and that its labor activities are subject to the Labor Manage-
[fol. 401] ment Relations Act, 1947. Amalgamated Association v. Wisconsin Board, 340 U.S. 383, 391, 71 S.Ct. 359, 95 L.Ed. 364; State ex rel. State Board of Mediation v. Pigg, 362 Mo. 798, 244 S.W.2d 75, 80(8).

The defendants' first attack upon the constitutionality of the King-Thompson Act, Ch. 295 RSMo 1949, is that it contravenes Art. I, Section 8, and Art. VI of the Constitution of the United States in that it conflicts with the National Labor Relations Act of 1935, as amended by the

Labor Management Relations Act of 1947. The national labor relations laws were enacted pursuant to Section 8, Clause 3 of Art. I, which empowers Congress to regulate commerce among the several states. Art. VI, Clause 2, declares the Constitution and the laws of the United States made pursuant thereto to be the supreme Law of the Land.

The constitutionality of the King-Thompson Act was under attack on the same ground in the case of State ex rel. State Board of Mediation v. Pigg, 362 Mo. 798, 244 S.W.2d 75. In the Pigg case, this court held the Act was severable, particularly those sections directly affecting the State Board of Mediation, its legal existence, powers and duties. 244 S.W.2d 79(7). The first eight sections of the King-Thompson Act, Secs. 295.010-295.080, RSMo 1949, declaring state policy, defining terms, creating the Board and defining its duties, powers and mediation services, were held not to be in conflict with the Labor Management Relations Act, 1947, particularly in view of Secs. 202(c) and 203(b), 29 U.S.C.A. Secs. 172(c) and 173(b), which contemplate the existence of State Boards and cooperation with them. 244 S.W.2d 80(8, 9). Sections of the King-Thompson Act providing for public hearing panels, being Secs. 295.120-295.170, were held in the Pigg case not to require compulsory arbitration and not to be in conflict with the Labor Management Relations Act since both the federal and state acts "rely upon the force of public opinion to induce the parties to arrive at a voluntary agreement." 244 S.W.2d 82(10). To the extent that those sections are a necessary [fol. 402] predicate for the additional sections not reached for decision in the Pigg case, but with which we are now concerned, we reaffirm our previous holding that those sections are not unconstitutional as being in conflict with the federal Act.

The facts relied upon to rebut the presumption of constitutionality of the Act must specifically appear in the record. Pacific States Box & Basket Co. v. White, 296 U.S. 176, 185, 56 S.Ct. 159, 80 L.Ed. 138, 101 A.L.R. 853; State ex rel. Kenosha Auto Transport Corporation v. Flanigan, 349 Mo. 54, 159 S.W.2d 598, 599(2, 3). Judicial review will not be accorded constitutional questions which are not directly and necessarily involved in the particular

legal situation presented on appeal. Juengel v. City of Glendale, 161 S.W.2d 408, 409(2); Kansas City, Mo. v. Williams, 205 F.2d 47, 51(3), certiorari denied 346 U.S. 826, 74 S.Ct. 45, 98 L.Ed. 351.[1]

The essential facts in this case are that the governor, after investigation, proclaimed that the public interest, health and welfare were jeopardized as a result of the interruption of gas service caused by a strike of Laclede employees; executive orders were issued, the property of the utility was seized; and, when the employees failed to return to work, the state sought and obtained an injunction. The parts of the Act directly involved are Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 295.200 RSMo, making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means. Under established principles, [fol. 403] we will restrict our consideration to those sections directly involved.

The dominant purpose of the King-Thompson Act is the protection of the welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state.[2] Its provisions are directed

[1] The wisdom of our not passing on such questions until they are squarely before us is well stated in West v. Spencer, 238 Mo. 65, 141 S.W. 586, 588(2), as follows: "This rule has a tendency to exclude obiter; it points the distinction between a legal treatise on a general head of the law and a judicial opinion on a concrete case, and it saves trouble to those judges who come after us and are called to decide the question as vital and turning in some appeal."

[2] Section 295.010, declaring the state policy is as follows: "It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest. (L. 1947 V. I p. 358 §1)"

against both the utility and its employees for the purpose of protecting the patrons and the public generally. While it makes mediation services and public hearing panels available, it does not force these services upon the parties. This is consistent with the policy of the Labor Management Relations Act, 1947. The Act does not purport to be a complete set of labor relation laws.

Section 295.180 authorizes the governor to take possession of the utility property for the use and operation by the state of Missouri only when the parties to the labor dispute "engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in failure to continue the operation of the public utility, and threatens the public interest, health and welfare."

The State of Missouri has regulated the relations between public utilities and their patrons as far back as 1913 when the Public Service Commission was established. See Laws of Missouri 1913, p. 602, now Ch. 386, RSMo 1949. The [fol. 404] Public Service Commission Law disclaims any intent to interfere with interstate commerce, "except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress." Laws of Missouri 1913, p. 651, Sec. 138; Sec. 386.030 RSMo 1949.

The right of a state to regulate and control public utilities operating within its borders is inherent and is referable to the police powers. Statutes with respect thereto being remedial should be liberally construed. State ex rel. Laundry, Inc. v. Public Service Commission of Missouri, 327 Mo. 93, 34 S.W.2d 37, 42(2); Atlantic Coast Line R. Co. v. North Carolina Corp. Comm., 206 U.S. 1, 27 S.Ct. 585, 51 L.Ed. 933; Louisville etc. R. Co. v. Tennessee R. Comm., 19 F. 679; 73 C.J.S. 1006, Public Utilities § 11; 43 Am. Jur. 577, Public Utilities and Service § 10. Section 386.610 of our statutes provides that the Public Service Commission Law "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice *between patrons and public utilities.*" (Emphasis supplied.)

Chapter 386 of the statutes deals generally with the public service commission, its powers and duties and procedure before it. Chapter 393 deals specifically with gas, electric, water and heating corporations. Sec. 393.130 pro-

vides that every such utility, including a gas company, is required by law to furnish and provide "such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Laws of Missouri 1913, p. 602.

It is quite clear that the "patrons" of Laclede Gas Company were not furnished with "safe and adequate" service after the strike began. The strike had been in progress for five days before the governor exercised his emergency powers and it was four days later before the state filed suit. The evidence demonstrates conclusively that the public health, safety and interest was jeopardized and that [fol. 405] the governor had reasonable cause to take action.

The evidence showed that Laclede had approximately 364,000 customers, including domestic, industrial and commercial users. It was the only utility distributing gas in the area. Residential customers used gas for cooking, water heating, refrigeration and space heating. Practically all of the hospitals in the St. Louis area used gas for sterilization, hot water heating, cooking and space heating. Doctors and dentists in the area were also furnished with gas for their office purposes. Large housing projects were also among the company's customers.

During the first ten days of the strike, Laclede received in excess of 13,000 service calls concerned principally with complaints that the gas service had failed or that leaks existed in the streets. Records of typical cases involving danger to health and safety were put in evidence by the state. The normal number of complaints concerning failure of gas service for such a period was about 100. There was testimony that "practically all the areas in our county system" had been denied gas service due apparently to the closing of shut-off valves by unauthorized persons. Areas within the city of St. Louis were without gas largely due to water being injected into the gas mains. Shut-off valves were locked in boxes which could be opened only by a special type of key. Certain employees had these keys prior to the strike and there was no way of telling if all of them had been turned in. Some members of fire departments throughout the city and county also had keys to these boxes. Instances were discovered by the police where water was injected into the gas mains. In one case, the

hose from a water faucet was still connected and water was running into the gas pipe when the police arrived. Water in the gas system may shut off a customer's gas temporarily in traveling through the pipes to a low point in the system; and, after it has passed, the gas may come back on and escape through an open outlet, thereby creating a dangerous situation. (As modified November 10, [fol. 406] 1958.) Restoring gas service in any section requires the help of a great number of people. If the valve were merely turned on again, gas might escape through an open outlet and create an explosive or otherwise dangerous situation. It is necessary to shut off the gas at every meter, turn the gas back into the system, then turn on the gas for each customer and light the pilots. During the strike the company did not have sufficient employees to restore service once it had been turned off.

There were also reports of gas escaping into the sewer systems and causing gas fires which had to be extinguished. At one station, wires carrying electric current used for power were disconnected by the unscrewing and removing of three bolts. In trying to discover the trouble, the man in charge of the plant came in contact with the wires and was severely burned. If the electric connection had not been restored in time, the seal of the gas tank would have been broken and the gas in the holder would have escaped. There was also evidence of tampering with the telemetric controls, which are instruments designed to keep the gas pressure at the proper amount in various sections of the distribution system. This created a danger in that gas lines might be ruptured by excessive pressure and flames on burning appliances might be dangerously increased. Arrangements were made with city and county police to protect the places where these telemetric controls were located, but the police could not furnish twenty-four-hour protection. The company also received numerous reports of escaping gas. Since natural gas has practically no odor, it was the practice of Laclede and other companies to add an odorant for safety purposes so that leaks could be detected more readily. This odorant, a liquid, was normally available to some of the employees. During the strike a bottle of this odorant was thrown through a window of the Forest Park office of the company, and other quantities of

it were deposited at various places in the service area to [fol. 407] give the impression that there were leaks where none existed.

When the strike began, the unions advertised in the newspapers that they were setting up crews to take care of emergency work and listed telephone numbers for the public to call. The defendants' evidence was that these crews responded to approximately 150 calls.

While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders.

Daniel C. Rogers, Chairman of the State Board of Mediation, told the union representatives that by their strike they had caused the service of a public utility to be discontinued and advised them that under the Public Service Commission Law, he felt that "they, as well as the company, were obliged to render continuous and safe service to the public." However, the employees did not resume their duties until the trial court rendered its judgment and decree.

"Employees of a public service corporation assume upon entering the service an implied obligation to perform their duties in such a manner as will enable the corporation to discharge its obligations to the public." 35 Am. Jur. 514, Master and Servant, Sec. 82. See also Wilson v. New, 243 U.S. 332, 353.

A utility in its relation to the state and the people it serves cannot be considered wholly separate and apart from its employees for without them the utility cannot [fol. 408] function and render safe and adequate service.[3]

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[3] Section 10, Art. VII of the Labor Agreement of Local 8-6, dealing with work under adverse weather conditions, provides, inter alia, p. 43: "During inclement weather Leak Trucks shall do work of emergency nature only. (Emergency work includes turning on of service and answering of all leaks reported by the public.)" This contract, put in evidence by the defendants, expired June 30, 1956, but the portion quoted indicates a recognition of public obligation by the employees as well as by the utility.

The Public Service Commission law recognizes this and imposes penalties on employees as well as on utilities for their wrongful acts.

Section 386.570 imposes a penalty upon any corporation, person or public utility which violates or fails to comply with any provision of the constitution or any law of the state or any order of the commission. In like manner, § 386.580 makes it a misdemeanor for every officer, agent or employee of a public utility who violates or fails to comply with any provision of the constitution or of the laws of this state or any order of the commission.[4] This also has been the law of Missouri since 1913, presumably a valid enactment under the police powers of the state.

A local public utility occupies a favored position in that it is free from competition and has other privileges such as the right of eminent domain. These advantages inure to the benefit of the utility employees in the form of greater continuity and security of jobs and compensation. The [fol. 409] demand for utility services is constant. Compensation of employees is an operating cost of the utility and the rate must be sufficient for the payment of such expenses. 73 C.J.S. 1040, Public Utilities, § 25, Note 15. The employees' duties are owed to the public though rendered through the utility. So long as the status of employee continues, the duty remains. Regulation by the state is necessary because utility service is not an individual, but a community problem. The state's representation of the public would be deficient if it did not have some right to control the conduct of employees through which the utility operates.

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[4] "386.580. Employee of public utility guilty of misdemeanor, when—Every officer, agent or employee of any corporation or public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any corporation, person or public utility of any provision of the constitution of this state or of this or any other law, or who fails to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids or abets any corporation, person or public utility in their or its failure to obey, observe and comply with any such order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, * * * is guilty of a misdemeanor * * *." Laws of Missouri 1913, p. 649.

A strike or lockout which jeopardizes the public health, safety or interest is not a protected activity under the Labor Management Relations Act, 1947. Sec. 1(b) of the Act, 29 U.S.C. Sec. 141(b) provides: "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, *and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest.*" 61 Stat. 136. (Italics added). This congressional declaration clearly indicates a purpose to subordinate such "acts and practices" to the public health, safety and interest. By use of the term "under law" state laws must have been intended as well as federal laws because historically and traditionally the state governments have been vested with the protection of the public health, safety and interest under their general police powers.

Consistent with the subordination of labor relation acts and practices which jeopardize the public interest is the 1947 amendment which makes it clear that Congress did not [fol. 410] intend to remove any existing "limitations or qualifications" on the right to strike.[5] Sec. 13 as amended;

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[5] The National Labor Relations Board, in Marshall Car Wheel and Foundry Co., 107 N.L.R.B. 314, 315, recognized that there are employments in which the right to strike is subordinated by the nature of the employee's duties, stating: "In cases involving supervisory and plant-protection employees, the Board has recognized the validity of the general principle that the right of certain classes of employees to engage in concerted activity is limited by the duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as foreseeably would result from their sudden cessation of work. We are of the opinion that this duty extends as well to ordinary rank-and-file employees whose work tasks are such as to involve responsibility for the property which might be damaged. Employees who strike in breach of such obligation engage in unprotected activity for which they may be discharged or subjected to other forms of discipline affecting their employment conditions."

29 U.S.C. Sec. 163. The United States Supreme Court has recognized that violations of local laws enacted for the preservation of property rights and personal safety are without the protection of the federal Act. National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U.S. 240, 59 S.Ct. 490, 83 L.Ed. 627, a "sit-down" strike; International Union v. Wisconsin Board, 336 U.S. 245, 258-265, 69 S.Ct. 516, 93 L.Ed. 651, intermittent work stoppages; Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740, 748-749, 62 S.Ct. 820, 86 L.Ed. 1154 and United Automobile Workers v. Wisconsin Board, 351 U.S. 266, 274-275, 76 S.Ct. 794, 100 L.Ed. 1162, mass picketing and violence against persons and property. This is consistent with Congressional intent as expressed in other Acts where the exercise of the police power by the local government is particularly suitable. For instance, the Natural Gas Act, 52 Stat. 824, expressly provides that it shall not apply to "local distribution of natural gas or to the facilities used for such distribution." 15 U.S.C. Sec. 717(b). This Act was passed June 21, 1938, three years after the original National Labor Relations Act. Congress would hardly expect the state to regulate and control the local distribution of natural gas and the facilities therefor without the [fol. 411] governmental powers necessary to make its laws and orders with respect thereto effective.

There are also federal laws which have the effect of limiting and qualifying the right to strike. In Southern S.S. Co. v. National Labor Relations Board, 316 U.S. 31, 62 S.Ct. 886, 86 L.Ed. 1246, seamen of a ship whose home port was Philadelphia struck and refused to obey orders while in port at Houston. The discharge of the seamen was held to be justified because the strike was in violation of the federal mutiny laws. The national emergency provisions of the labor relations Act, 29 U.S.C., Sec. 176-180, have limited and qualified the right to strike and there is no question but that Congress could make unlawful and prohibit entirely strikes that jeopardize the national health, safety and interest. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 588.

An absence of violence traceable to the defendants does not render this a "peaceful" strike. In Senn v. Tile Layers

Union, 301 U.S. 468, 479, 57 S.Ct. 857, 81 L.Ed. 1229, the court stated: "The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence but absence of any unlawful act. It precludes the intimidation of customers. It precludes any form of physical obstruction or interference with the plaintiff's business." A strike such as this operates chiefly against the public. The utility loses no business because there is nowhere for the patrons to turn for service. The inevitable result of such a strike is to coerce and intimidate the customers contrary to laws made for their protection.

Both the utility and its employees failed in their duty to furnish the public with a continuous, safe and adequate supply of gas. This is in violation of the laws of Missouri and the orders of the Public Service Commission implicit in the approval of the corporate charter and the grant of the utility's franchise and permit. Such violation is made a misdemeanor by our statutes, Secs. 386.570 and 386.580. [fol. 412] Further, our conspiracy statute, Sec. 556.120, provides: "If two or more persons shall agree, conspire, combine or confederate: First, to commit any offence; * * * or, sixth, to commit any act injurious to the public health or public morals, * * * shall be deemed guilty of a misdemeanor." The failure of the parties to agree upon a contract and the resultant strike does not excuse the violations. Such a strike if long continued would likely result in proceedings to suspend or revoke the utility's franchise or permit for violation of obligations provided by law.

The appellants contend this case is ruled by Amalgamated Association v. Wisconsin Board, 343 U.S. 383, but we do not think so. The statutes involved in the two cases are substantially different. One of the main differences is that the Wisconsin Act provided for compulsory arbitration while the King-Thompson Act does not. The utility employees are not required to accept mediation services or the findings of the hearing panel under the Missouri Act. Voluntary agreements through collective bargaining are not abolished. The only limitation upon an employees' strike or a company's lockout is if the public interest is endangered. The Wisconsin Act provided for a ban on strikes, and compulsory arbitration when an impasse was

reached in negotiations. The Missouri Act, on the other hand, does not render a strike unlawful until the governor has determined that the public health, safety and interest is threatened and has seized the property "for the use and operation by the state of Missouri in the public interest." Section 295.180. The King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities as the Wisconsin Act appeared to be. Emergency legislation is justified under the police powers. 16 C.J.S. 972-973, Constitutional Law § 198. The purpose of seizure is the preservation [fol. 413] of community life as encouraged and fostered by the state. The purpose of the Act is to protect its citizens against disaster. As previously indicated, we deem the strike in the circumstances in this case to be unlawful and, therefore, not a peaceful strike as the term is used in Amalgamated Association v. Wisconsin Board.

The King-Thompson Act operates in the field of police powers and deals specifically with the relation between a utility including its employees, on the one hand, and the "patrons" and citizens of the community, on the other. The Taft-Hartley Act deals with interstate commerce and more particularly with the relations between employers and their employees. The dominant purposes of the two Acts are different; if there is any overlapping, it is incidental and not substantial. Only undue and discriminatory burdens on interstate commerce are forbidden. Breard v. Alexandria, 341 U.S. 622, 71 S.Ct. 920, 95 L.Ed. 1233, 35 A.L.R. 2d 335, rehearing denied 342 U.S. 843, 72 S.Ct. 21, 96 L.Ed. 637.

The exercise of the state police power is superseded only where repugnance or conflict with a federal act is so direct and positive that the two acts cannot be reconciled. United Workers v. Laburnum Construction Co., 347 U.S. 656, 74 S.Ct. 833, 98 L.Ed. 1025; Breard v. Alexandria, supra. As stated by Mr. Chief Justice Hughes in Kelly v. Washington, 302 U.S. 1, 10, 58 S.Ct. 87: "The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance

or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"

A growing number of decisions of the United States Supreme Court indicates a considerable area where state activity and regulation is permitted. Among the more recent cases are: U.A.W. v. Russell, 356 U.S. ——, 78 S.Ct. 932, 2 L.Ed.2d 1030, and Machinists Ass'n. v. Gonzales, 356 U.S. ——, 78 S.Ct. 923, 2 L.Ed.2d 1018. Russell [fol. 414] recovered damages for loss of earnings and malicious interference with his employment suffered when pickets prevented his entering his place of work. Gonzales, wrongfully expelled from his union, obtained a decree of restoration to membership and a money judgment. In each case a state court judgment was affirmed although the matters appeared to be partially within the jurisdiction of the National Labor Relations Board.[6] Police powers of the state and their exercise as opposed to federal laws were involved in Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740, 749, wherein the Court stated that it would "not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several states" in regard to "such traditionally local matters as public safety and order and the use of streets and highways." The King-Thompson Act is predominantly an extension of the regulation and control of public utilities in the public interest and as such is the exercise of "historical powers" of the state. So construed Sections 295.180 and 295.200(1) present no direct and irreconcilable conflict with the federal Act even without the aid of the subordination provisions of 29 U.S.C. Sec. 141. The Sections are therefore not unconstitutional.

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[6] See also: Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740, 748-751; Algoma Plywood Co. v. Wisconsin Board, 336 U.S. 301; International Union v. Wisconsin Board, 336 U.S. 245; Garner v. Teamsters Union, 346 U.S. 485, 488; United Construction Workers v. Laburnum Construction Co., 347 U.S. 656; Adams Dairy v. Burke, Mo., 293 S.W.2d 281, cert. den. 352 U.S. 969; United Auto Workers v. Wisconsin Board & Kohler Co., 351 U.S. 266, 274; Amalgamated Clothing Workers v. Richmond Bros., 348 U.S. 511; Giboney v. Empire Storage and Ice Company, 357 Mo. 671, 210 S.W. 2d 55, affirmed 336 U.S. 490.

Section 295.200(6) authorizes the courts in Missouri "to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder." The state has always been deemed to have the power to compel a public utility company to furnish service to the inhabitants of the territory it has undertaken to serve. State ex rel. Ozark Power [fol. 415] & Water Co. v. Public Service Commission of Missouri, 287 Mo. 522, 229 S.W. 782, 785(2); New York & Queens Gas Co. v. McCall, 245 U.S. 345, 38 S.Ct. 122, 62 L.Ed. 337; 73 C.J.S. 1002, Public Utilities § 8a.

43 Am. Jur. 595, Public Utilities and Service, § 33 states: "A common use of the remedy of injunction against public utilities is to compel them to perform their obligations to the public, as, for example, the obligation to furnish service or supply a commodity." Among the cases cited in support of this statement is North Carolina Public Service Co. v. Southern Power Co. CCA-4, 282 F. 837, 33 A.L.R. 626, writ of certiorari dismissed 263 U.S. 508, 44 S.Ct. 164, 68 L.Ed. 413. See also 15 A.L.R.2d 257-264.

Our general statute, Section 386.360, expressly providing for such relief in the public interest states that: "Whenever the commission shall be of the opinion that a * * * gas corporation, * * * is failing or omitting or about to fail or omit to do anything required of it by law or by order or decision of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order or decision of the commission, it shall direct the general counsel to the commission to commence an action * * * for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions."

Section 295.210 is a savings clause similar to that contained in the Labor Management Relations Act, 29 U.S.C. Section 143. It provides: "No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or

service without his consent." It follows that § 295.200(6) [fol. 416] is not in conflict with the federal Act and is, therefore, not unconstitutional.

The sections which we have considered are severable from and may stand independently of the remainder of the Act. Although the defendants argue strenuously to the contrary, no case is made in this record for determination of the constitutionality of § 295.090, pertaining to a written labor agreement of a minimum duration and § 295.200, subparagraphs 2, 3, 4 and 5, relating to monetary penalties and loss of seniority. We, therefore, refrain from expressing any opinion with reference thereto. Wilson v. New, 243 U.S. 332, 354; Lolordo v. Lacy, 337 Mo. 1097, 88 S.W.2d 353, 360(19); Beets v. Tyler, 365 Mo. 895, 290 S.W.2d 76, 82(16); Logsdon v. Duncan, Mo., 293 S.W.2d 944, 946(1); State ex rel. State Board of Mediation v. Pigg, supra.

The appellants next charge that the King-Thompson Act is in violation of Art. I, § 29, of the Constitution of Missouri because the right to bargain collectively includes the right to strike. Section 29 provides: "That employees shall have the right to organize and to bargain collectively through representatives of their own choosing." This is to the same effect as § 7 of the amended National Labor Relations Act, 29 U.S.C. § 157, yet limitations on the right to strike are recognized under the federal law. The King-Thompson Act does not abolish the right of utility employees to strike, but only subordinates the right to the public interest. This is an exercise of the police power of the State which § 29 does not impair. See City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539, 542, 544, and Glidewell v. Hughey, Mo., 314 S.W.2d 749. We find no valid distinction which would prefer this over other constitutional guarantees of personal liberties which have been held to be subordinate to the police powers. Breard v. Alexandria, 341 U.S. 622, 642; Prince v. Massachusetts, 321 U.S. 158, 166-167.

[fol. 417] Next appellants contend that Sec. 295.180, providing for seizure, is an unlawful delegation of legislative powers violative of Art. II, Sec. 1, of the Constitution of Missouri, 1945, in that it does not provide sufficient stand-

ards and guides for "carrying out the seizure provisions of the Act." The alleged deficiencies of the Act in this regard are not pointed out more specifically. Sec. 295.180 sets out in considerable detail the circumstances under which the governor may take possession of utility property. Sec. 295.200(1) makes a strike or concerted refusal to work thereafter unlawful and Sec. 295.200(6) vests the courts with jurisdiction to enforce the Act or any of the governor's rules or regulations. We do not think the Act "fails to prescribe with reasonable clarity the limits of the power delegated," 42 Am.Jur. 341, Public Administrative Law, Sec. 44, or that it fails to state the purpose "with sufficient exactness to enable those affected to understand these limits." U. S. v. Rock Royal Co-op, Inc., 307 U.S. 533. When the legislature has described the purpose or rule, matters of detail in administering the act may be left to the executive even though the exercise of discretion is involved. Spiteaufsky v. Hatten, 353 Mo. 94, 182 S.W.2d 86, 109(60); State ex rel. Crain v. Moore, 339 Mo. 492, 99 S.W.2d 17, 21(6). It is not necessary that statutes prescribe a rule of action where they deal with situations which require the vesting of discretion in a public officer such as where the discretion relates to a police regulation and is necessary to protect the public health, safety and welfare. Ex parte Williams, 345 Mo. 1121, 139 S.W.2d 485, 490(10); Kalbfell v. City of St. Louis, 357 Mo. 986, 211 S.W.2d 911, 915(3). See also 16 C.J.S. 575, Constitutional Law, Sec. 138 and 42 Am. Jur. 337, Public Administrative Law, Sec. 43. The assignment is denied.

[fol. 418] Next the appellants attack Sec. 295.200(1) on the ground that it violates Secs. 2, 8, 9 and 10 of the Constitution of Missouri, and the First, Thirteenth and Fourteenth Amendments of the Constitution of the United States. Sec. 295.200(1) provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state."

First the appellants claim that the statute is so vague and indefinite that it violates rights of free speech, peaceable assembly, due process and other constitutional guarantees. They say the statutory language is susceptible of different meanings and cite cases involving criminal statutes, which generally hold that due process requires the crime and its elements to be so clearly expressed that an ordinary person may know the lawful course. This is not a criminal statute, but in any event, we do not think the statute is fatally vague or indefinite. As stated in United States v. Petrillo, 332 U.S. 1, 8, 67 S.Ct. 1538, 91 L.Ed. 1877, the constitution does not require impossible standards and: "The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more."

Further the defendants contend that Sec. 295.200(1) is an "outright denial of the right of free speech" guaranteed in the First and Fourteenth Amendments to the United States Constitution and Sec. 8, Art. I of the Missouri Constitution and that the statute denies their rights to peaceably assemble for their common good, pursuant to Sec. 9, Art. I of the Constitution of Missouri. In support of these contentions, the defendants cite Thornhill v. Alabama, 310 [fol. 419] U.S. 88, holding invalid a statute forbidding picketing; Thomas v. Collins, 323 U.S. 516, involving a state statute requiring labor organizers to register before soliciting union memberships; Marx & Haas Jeans Clothing Co. v. Watson, 168 Mo. 133, 67 S.W. 391, seeking to enjoin distribution of a circular regarding the plaintiff's labor practices; and Ex parte Hunn, 357 Mo. 256, 207 S.W. 2d 468, holding invalid the Madison Act, a state statute.

The cases cited by the defendants recognize that these constitutionally guaranteed rights are subject to regulation in the public interest. The circumstances under which this may be done and to what extent is well-stated in an opinion by the late Chief Justice Vanderbilt of the Supreme Court of New Jersey in a case involving an attack upon a similar New Jersey statute, State v. Traffic Telephone Workers Federation, 2 N.J. 335, 66 A.2d 616, 622, as follows: "It must be recognized that the statutes in question

inevitably impinge upon the unfettered exercise of some of the constitutional guarantees asserted by the defendant union, but only out of deference, however, to the paramount significance of other public rights. That, as we have shown, is not an uncommon occurrence in the field of constitutional law. The immediate question is whether or not such restrictions on the absolute application of any constitutional guarantees come within the area delimited in the decisions of the Supreme Court of the United States as the ultimate arbiter of the meaning of the Federal Constitution as justifying such restrictions. The tests that the United States Supreme Court has laid down in this field, and particularly where freedom of speech, freedom of the press, and freedom of assembly are involved, are that such restraints are justifiable only "to prevent grave and immediate danger to interests which the state may lawfully protect' and any such restraints must be reasonable."

[fol. 420] Defendants make no showing that the statute interferes with their right of assemblage or freedom of speech as such. Nor does it prohibit picketing except as it may be an adjunct of the strike or concerted refusal to work. Moreover, picketing is not an unqualified right, but is also subject to the police power. See Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 503-504, 69 S.Ct. 684, 93 L.Ed. 834; Building Service Employees Union v. Gazaan, 339 U.S. 532, 536; and International Brotherhood of Teamsters v. Hanke, 339 U.S. 470, 474. Teamsters Union v. Vogt, Inc., 354 U.S. 284, discusses the more recent cases including Thornhill and concludes, 354 U.S. 293: "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." This statute is part of emergency legislation dealing with clear and present threats to the public health and welfare. It is a reasonable regulation and not unconstitutional on the grounds stated.

The defendants further say that § 295.200(1) denies utility employees and their representatives equal rights and opportunities under law, Art. I, § 2 of the Missouri Constitution, and equal protection of the laws under the

Fourteenth Amendment. It is within the legislative authority to classify and deal with businesses affected with the public interest. Munn v. Illinois, 94 U.S. 113. The classification of utility employees and union representatives cannot be said to be lacking any adequate or reasonable basis. Whitney v. California, 274 U.S. 357, 370; Wilson v. New, 243 U.S. 332, 349. It is unnecessary for the state legislature to cover the whole field of possible abuses. Hughes v. Super. Court of California, 339 U.S. 460, 468.

[fol. 421] Finally, the defendants say that § 295.200(1) imposes a form of compulsory service or involuntary servitude in violation of Amendment Thirteen of the Constitution of the United States. Section 295.210 is a saving provision similar to the one in the Labor Management Relations Act, 1947, 29 U.S.C.A., § 143. It provides in substance that no employee shall be required to render labor or service without his consent and that the Act shall not be construed so as to make the quitting of his job by an individual employee an illegal act. The defendants' interpretation of the § 295.200(1) is strained and unwarranted. It loses sight of the fact that the section under attack is directed against a strike or concerted refusal to work and has nothing to do with one or more quitting work of their own volition. The section does not have the purpose or effect of imposing involuntary servitude in violation of the Thirteenth Amendment. Auto Workers v. Wisconsin Board, 336 U.S. 245, 251.

In its amended judgment and decree entered August 17, 1956, the trial court found and declared that "Chapter 295, R.S.Mo., 1949, and all portions thereof are valid, enforceable, constitutional, and not in violation or derogation of the Constitution of the United States or of the Constitution of the State of Missouri." We have limited our inquiry and determination to §§ 295.010-295.080, 295.120-295.170, 295.180, 295.200(1) and 295.200(6). With respect to these sections, we have considered and denied all of defendants' claims of unconstitutionality.

As so limited and modified the judgment is affirmed.

Clem F. Storckman, Judge.

All concur

[fol. 422]

IN SUPREME COURT OF MISSOURI

45869

Appeal From the Circuit Court of the City of St. Louis

STATE OF MISSOURI, Respondent,

vs.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al., Appellants.

JUDGMENT—September 29, 1958

Now at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the amended judgment aforesaid, in form aforesaid, by the said circuit court of the City of St. Louis rendered, be limited and modified to determination of Sections 295.010-295.080, 295.120-295.170, 295.180, 295.200 (1) and 295.200 (6), and as limited and modified the said judgment be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants its costs and charges herein expended and have therefor execution. (Opinion filed)

[fol. 423] [File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

En Banc

No. 45,869

[Title omitted]

MOTION OF APPELLANTS, LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL. FOR REHEARING—Filed October 14, 1958

Come now all the Appellants herein and respectfully move this Honorable Court to grant them a rehearing in the above entitled cause, upon the ground that in affirming the judgment of the Trial Court, as limited and modified by its Opinion, the Court has, as shown by its Opinion, overlooked or misinterpreted certain matters of law and of fact that are material to the issues raised in this cause, in the following particulars, to-wit:

I.

The Court misinterpreted Chapter 295, R. S. Mo. 1949, when it held in its Opinion (P. 8) that "The dominant purpose of the King-Thompson Act is the protection of the health and welfare of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control" and that "The Act does not purport to be a complete set of labor relation laws" (P. 8).

Section 295.010 R.S. Mo. 1949 expressly declares that even "*the possibility of labor strife* in utilities operating [fol. 424] under governmental franchise or permit * * * is a threat to the health and welfare of the people" and that "the *state's regulation of the labor relations affecting such public utilities* is necessary in the public interest".

Chapter 295, R. S. Mo. 1949 contains broad and extensive powers over the whole area of labor relations, and "labor disputes" of every kind and character are embraced within the coverage of the Act. Sec. 295.020 (5) states "The term

'labor dispute' shall involve any controversy between employer and employees as to hours, wages and working conditions", and makes no exceptions. The Act extends even to representation rights of collective bargaining representatives, for the concluding sentence of Sec. 295.020 (5) reads "The fact that employees have amicable relations with their employer shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes."

II.

The Court misinterpreted the record when it stated in its Opinion (P. 10) that "The records of the company showed that practically the entire county system was without gas service due apparently to the closing of shut-off valves by unauthorized persons." The witness was testifying from an exhibit, Plaintiff's Exh. 4, which disclosed only that certain service areas, including one subdivision, at a point on Patterson north of Lindbergh in St. Louis County were without gas, but these constituted only a small and limited portion of the St. Louis County area serviced by the Company.

III.

The court misinterpreted the record as a whole in finding that an emergency existed and in disregarding the portions of the record consisting of testimony disclosing that complaints of lack of gas and presence of gas leaks were routine [fol. 426] and normal in the operation of Laclede Gas Company, and complaints of gas failure were a regular occurrence during the normal operations of the company in the absence of a strike.

IV.

The Court stated in the Opinion (P. 12) that "Daniel C. Rogers, Chairman of the State Board of Mediation, told the Union representatives that by their strike they had caused the service of a public utility to be discontinued and advised them that under the Public Service Commission Law he felt that 'they, as well as the Company, were obliged

to render continuous and safe service to the public' ", but overlooked the fact that said Daniel C. Rogers also told the employees that the law "required the employees to continue to render services to the Laclede" (R. 172) and that "the obligation and responsibility falls on the employees to stay on their jobs to enable the company to render this service" (R. 172) and that the striking employees were required to report to work and stay on the job as employees of Laclede Gas Company, a private utility. (R. 172) (R. 170-171)

V.

The Court misinterpreted the record as a whole in its Opinion (P. 12) "that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized", for the cessation of work continued for more than a week following the finding of existence of the alleged emergency and the record in this case made during that week fails to show the existence of more than slight or temporary inconvenience to a small segment of the 364,000 customers served by Laclede Gas Company and no threat to the health and welfare of the community. The only emergency that existed was the emergency created by operation of the King-Thompson Act itself, which by implication and in operation declares every labor dispute resulting in a work stoppage on a public utility to be a threat to the public interest, health and safety.

[fol. 427]

VI.

The Court in its Opinion (P. 14) misinterpreted the relationship of the employees of public utilities by equating their employee status with a direct obligation and duty to the consuming public. Though the ultimate beneficiary of the employees' services may be the public, the only employer-employee relationship that is established or ever exists is between the private utility company and the employees, and the earlier decisions of this Court make it clear that this is only the ordinary master-servant relationship. The public does not bargain with or agree with utility employees on their wages, hours or working conditions, and

the public or agencies representing the public are without any constitutional or legal right or authority in this state to fix the same or to bargain with reference thereto. In the instant case, the State of Missouri does not regulate, but by absolutely forbidding the right to strike or to engage in other concerted activities for ultimate protection of the employees' economic interests causes the unilateral dictate of the private utility employer—without definition, guide-posts or standards—to be imposed upon utility workers as a group, and identifies collective resistance to that unilateral imposition as clashing with the exercise of the police power of the state.

VII.

The Court in its Opinion (P. 14) misinterprets the meaning and application of the Labor-Management Relations Act and Section 1(b) of that Act, 29 U.S.C. Sec. 141(b), and extends the policy statement of the Act so as to preclude and prohibit activities which are protected under Section 13 of the Act and which are recognized as lawful and valid under the decisions of the United States Supreme Court in cases involving labor disputes and strikes affecting public utilities that are affected with the same public interest as Laclede Gas Company.

[fol. 428]

VIII.

The Court in its Opinion (P. 14) misinterpreted the application and coverage of the Labor-Management Relations Act, 1947, by the assumption that "regulation by the State is necessary" when applied to the employer-employee relations of utility workers, and that because "The State's representation of the public would be deficient if it did not have some right to control the conduct of employees through which the utility operates", it may also regulate and prohibit the right to strike, and regulate, prohibit and forbid other protected collective activity already covered in the Federal Labor Act, and thereby effectively thwart the uniform plan of the Federal Act, which protects the right to strike and carefully limits and circumscribes any limitations thereof.

IX.

The Court in its Opinion (P. 14) misinterpreted the meaning and application of Section 1(b) of the Labor Management Relations Act, 1947, 29 U.S.C. 141 (b), by subordinating the "acts and practices" permitted to be exercised under that Act to State laws adopted under the general police powers, and by subordinating the exercise of the Federally protected right to strike in a bona fide labor dispute—after all notices required by the Federal Act had been given and all things done to comply with the provisions of that Act—to the enforcement of certain state laws allegedly concerned with the public health, safety and welfare. The Court has overlooked the principles and limitations stated in *Anheuser-Busch* vs. *Weber*, 348 U.S. 593, and cases following, wherein it was ruled that the State cannot in the enforcement of certain statutes enacted under the police power prohibit or make unlawful activity that is permitted and protected under the Federal law.

X.

The Court has misinterpreted the meaning and appli- [fol. 429] -cation of certain cases decided by the United States Supreme Court, all cited on Page 15 of the Opinion, which sustained the enjoining of tortious or unlawful conduct during a strike or in the course of picketing or which prohibited certain activities which do not constitute what is deemed to be a strike or strike action within the meaning of the Act, as conferring or leaving to the States the right, in the exercise of the State's police power, to absolutely prohibit a strike and all concerted strike activity. The decision of the Court appears to be contrary to the settled law, which is that an absolute prohibition or forbidding of the right to strike or to cease work collectively—however peaceably conducted—is an invalid denial of a right protected under the Federal Labor Act and an invalid intrusion into a field preempted by Federal law.

XI.

The Court has misinterpreted the purpose, meaning and implications of the 1947 amendment to Section 13 of the Labor-Management Relations Act, 1947; 29 U.S.C. Sec. 163 (Pp. 14-15 of Opinion) in such a way as to broaden the limitations and qualifications on the right to strike far beyond the scope intended by Congress, and the Court overlooked the numerous decisions of the United States Supreme Court which forbid the absolute prohibition of concerted action or the right to strike under the guide of the exercise of the police power by the States. The Court has overlooked the legislative history of the Labor-Management Relations Act since 1947 and failed to take into account any of the numerous unsuccessful attempts to amend the Federal Act so it could be applied as the Court is attempting to apply the same in this case, in a way that would permit state action forbidding the right to strike by public utility employees.

XII.

The Court on P. 15 of the Opinion misinterpreted the Natural Gas Act, 52 Stat. 821; 15 U.S.C. Sec. 717(b), as [fol. 430] containing the implied right in the States to regulate and control the labor relations involved in the local distribution of natural gas and facilities therefor. The Court has overlooked the fact that similar contentions had been made by the State of Wisconsin with reference to the gas utility distributing gas within the City of Milwaukee to support the claim of that state that it could similarly control the operations of that local gas utility.

XIII.

The Court misinterpreted the meaning of the phrase "peaceful" strike (P. 16) and misconstrues the natural consequences of a lawful strike for lawful objectives and lawfully conducted as constituting ipso facto unlawful acts of coercion and intimidation contrary to law. The Court in its Opinion effectively bars every form of peaceful concerted action which becomes effective by its ruling that "The inevitable result of such a strike is to coerce

and intimidate the customers, contrary to laws made for their protection". (P. 16)

XIV.

The Court has misinterpreted the law and the intent, purpose and clear implications of the National Labor Relations Act and the Labor-Management Relations Act, 1947 in its Opinion that (P. 16) by exercising the right to strike guaranteed in Section 13 of the Federal Act, the "employees failed in their duty to furnish the public with a continuous, safe and adequate supply of gas. This is in violation of the laws of Missouri and the orders of the Public Service Commission, implicit in the approval of the corporate charter and the grant of the utility's franchise and permit. Such violation is made a misdemeanor by our statutes." The Court's finding that "The failure of the parties to agree upon a contract and the resultant strike does not excuse the violations" (P. 17) [fol. 431] superimposes the State's Public Service Commission Law upon the National Labor Relations Act and causes the exercise of rights under the Federal Act to be subordinated to the police power of the state, contrary to law and proper constitutional construction.

XV.

The Court has misinterpreted the meaning and implications of the decision of the United States Supreme Court in *Amalgamated Association* vs. *Wisconsin Board*, 343 U.S. 383, and cases following thereafter (P. 17), because that decision and the cases decided thereafter support the proposition that this field and area of labor relations has been preempted by the Federal Labor Act.

XVI.

The Court misinterpreted (P. 17) and failed to properly apply the ruling of the United States Supreme Court in *Amalgamated Association* vs. *Wisconsin Board*, 343 U.S. 383, and *Anheuser-Busch* vs. *Weber*, 348 U.S. 593, in failing to find that, as was ruled in the first of those cases and repeated in the second, the invalid Wisconsin statute

was also directed at the preservation and maintenance of public utility services, but the exercise of the State's police powers was held not to override the exercise of Federal power embodied in the National Labor Relations Act, as amended.

XVII.

The Court misinterpreted the King-Thomspn (sic) Act in defining the same as "strictly emergency legislation and not a comprehensive code for the settlement of labor disputes in utilities as the Wisconsin Act appeared to be" (P. 17), because the very declaration of policy in the King-Thompson Act defines the statute as being primarily concerned with all labor disputes on all public utilities operating in the State of Missouri, and covers and concerns [fol. 432] itself with the minutiae of labor relations, including even the length and duration of collective bargaining contracts and the form in which the same are to be executed. The Court in its Opinion (P. 17) defined the Wisconsin Act as a comprehensive code for the settlement of labor disputes and the Court overlooked the decision of the United States Supreme Court in Anheuser Busch vs. Weber, 348 U.S. 593, which stated that "The statute (The Wisconsin Act) was directed at the preservation of public utility services and not at maintenance of sound labor relations," which is the same purpose that this Court said is served by the King-Thompson Act. The purposes of the two State acts are identical though they may differ in procedures.

XVIII.

The Court has misinterpreted the application of the King-Thompson Act in treating the same as being a code dealing with the relations between the utility and its employees as one party and the patrons and citizens of the community on the other (P. 18), because an examination of the Act discloses that the entire Act is concerned with labor disputes between the employer on the one hand and the employee on the other, Sec. 295.020, R.S. Mo. 1949, and that, as expressed in the Act itself, its apparent dominant purpose is the "state's regulation of the labor re-

lations affecting such public utilities is necessary in the public interest." (Sec. 295.010 R.S. Mo. 1949) The Court has overlooked the fact that the dominant purposes of both the Federal and State Acts are similar and that the overlapping is most substantial and not incidental.

XIX.

The Court in its Opinion (P. 18) misinterprets the decision of the United States Supreme Court in *United Workers* vs. *Laburnum Construction Company*, a case involving civil recovery for the consequences of tortious [fol. 433] conduct, and misconceives the right to civil recovery as elevating the police power to a status where lawful conduct permitted under the Federal Act is forbidden. The Court has overlooked the clear limitations on the exercise of state police power announced in the decision of the United States Supreme Court in *Anheuser Busch* vs. *Weber*, 348 U.S. 593, wherein the state's police power could not be used to proscribe conduct protected or covered by the Federal Act.

XX.

The Court in its Opinion (P. 18) has misinterpreted the meaning and implications of the recent decisions of the United States Supreme Court in which civil recovery in damages was allowed in the State courts for acts which might constitute violations of the Federal Act. None of those decisions even remotely sanctions an absolute prohibition of the exercise of any right conferred under the Federal Act, nor support a total interdiction of the right to strike and engage in concerted activity and conduct in support thereof.

XXI.

The Court misinterpreted the decision of the United States Supreme Court in *Allen-Bradley Local* vs. *Wisconsin Board*, 315 U.S. 740, 749 (P. 19) as conferring upon the State the right to forbid strikes as an alleged "extension of the regulation and control of public utilities in the public interest", because the decision in that case

supports no such conclusion and the decision of the United States Supreme Court in *Amalgamated Association v Wisconsin* rendered subsequent thereto supports the contrary view and rejects a similar claim made by the State of Wisconsin.

[fol. 434] XXII.

The Court misinterprets the effect of Chapter 295 R.S. Mo. 1949 by stating in its Opinion (P. 21) that "The King Thompson Act does not abolish the right of utility workers to strike, but only subordinates the right to the public interest" by, in effect, denying the right to strike if it is exercised effectively. The exercise of rights granted under the Federal Labor Act is not to be protected only to the extent that it is ineffective, but denied the moment that the exercise of those rights becomes meaningful and effective, however peaceful may have been the conduct of those whose rights are denied.

XXIII.

The Court misinterpreted the meaning and effect of Section 295.180, providing for seizure, as not being an unlawful delegation of legislative powers violative of Article 2, Section 1 of the Constitution of Missouri, because it does not provide sufficient standards and guides. The statute is wholly devoid of any standards of conduct or guides by which employees of utilities, who are ordered on threat of dire consequences to cease and desist from otherwise lawful activity, can determine to whom they are responsible and who is legally obligated to fulfill and perform the terms of any working agreement undertaken with them. The Court in its Opinion (P. 22) overlooked the fact that in the instant case the State under its alleged seizure ordered the employees to report to work for the public utility in the very face of the fact that there was no collective bargaining agreement extant, and that whatever contract existed had expired by its terms, and further overlooked the fact that under the circumstances, the employees were individually and collectively being deprived of and denied their rights to act and bargain collectively.

[fol. 435]

XXIV.

The Court misinterpreted Section 295.200 (1) of the King-Thompson Act and its limitations on lawful activity in support of lawful ends protected under Federal statute (P. 23). In holding in its opinion that "This is not a criminal statute", the Court has overlooked the words of the statute which provide that "It shall be *unlawful*" to engage in the proscribed conduct and further overlooked the fact that, in addition to whatever other penalties are provided, the conduct proscribed was enjoinable by decree of the Court and enforcement of said decree included sanctions and severe penalties. The Court in its Opinion (P. 23) overlooked the fact that the language of the statute is such a broad prohibition that the "proscribed conduct when measured by common understanding and practices" amounts to an absolute prohibition of the exercise of their rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and Section 8, Article I of the Missouri Constitution.

XXV.

The Court in its Opinion (P. 24) misinterprets the regulation of constitutionally guaranteed rights in the public interest as the equivalent of prohibition thereof, because Section 295.200 (1) provides without limitation that "It shall be unlawful for any person, employee or representation . . . to call, incite, support or participate in any strike or concerted refusal to work", and the language is broad enough to cover any activity or communication, oral or otherwise, including conduct protected and vouchsafed under the Federal and State Constitutions and the Federal statutes.

XXVI.

The Court misinterpreted the purpose and intendment of lawful picketing in its Opinion (P. 25) by the holding "Nor does it (the statute) prohibit picketing except as it [fol. 436] may be an adjunct of the strike or concerted refusal to work", since the ruling of the Court denies

absolutely the right of picketing in the only manner in which the same is effective—that is, in support of a lawful strike and a concerted refusal to work. The Court also disregards the fact that all such picketing, however peaceful, is absolutely forbidden even when in support of a strike that is sanctioned under the Labor-Management Relations Act.

XXVII.

The Court in its Opinion (P. 25) misinterprets the meaning and implications of the decision in *Teamsters Union* vs. *Vogt, Inc.*, 354 U.S. 284, to deny the right to strike and the right to picket if any state policy is opposed to the exercise of that right and has overlooked the decisions of the United States Supreme Court in *Anheuser Busch* vs. *Weber* and in *Guss* vs. *Utah Board* in which that Court held that the State policy cannot supersede the Federal power, nor curtail the exercise of Federally protected rights.

XXVIII.

The Court in its Opinion overlooked and failed to take into account all the decisions of the United States Supreme Court in *UAW* vs. *O'Brien*, 339 U.S. 454; *Guss* vs. *Utah Labor Relations Board*, 353 U.S. 1; *Amalgamated Meat Cutters* vs. *Fairlawn Meats*, 353 U.S. 20; *San Diego Building Trades Council* vs. *Garmon*, 353 U.S. 26; *Anheuser Busch* vs. *Weber*, 348 U.S. 593; *Garner* vs. *Teamsters*, 346 U.S. 485, and other decisions of the United States Supreme Court, and its Opinion and ruling is contrary to the doctrine in those cases upholding and supporting the supremacy of the Federal Labor statute and forbidding state action paralleling or in contravention of the Federal Act.

[fol. 437]

XXIX.

The Court in its Opinion completely overlooked all of the legislative history of the Federal Act and of Section 13 thereof, including all the legislative history cited in the Opinion of the United States Supreme Court in *Amalgamated Association* vs. *Wisconsin Board*, and all the legislative history subsequent thereto, which demonstrated

that protection of the right to strike is preserved for employees of public utilities operating within a single state where the activities of the utility affect commerce.

Wherefore, defendants respectfully move this Honorable Court for a rehearing in this case and for entry of a judgment reversing and setting aside the judgment of the Trial Court in its entirety.

Respectfully submitted,

Morris J. Levin, 1125 Arcade Building, 812 Olive Street, St. Louis 1, Missouri, Attorney for Appellants.

[fol. 438]

IN SUPREME COURT OF MISSOURI

45869

STATE OF MISSOURI, Respondent,

vs.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO et al., Appellants.

ORDER MODIFYING OPINION AND OVERRULING MOTION FOR REHEARING—November 10, 1958

Now, at this day, it is ordered by the court, on its own motion, that the opinion in the above entitled cause be, and the same is hereby modified.

Now at this day, the court having seen and considered appellants' motion for a rehearing, doth order that said motion be, and the same is hereby overruled.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 439]

SUPREME COURT OF THE UNITED STATES

No. 776—October Term, 1958

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al., Appellants,

vs.

MISSOURI.

ORDER POSTPONING JURISDICTION—May 4, 1959

Appeal from the Supreme Court of the State of Missouri.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

PLAINTIFF'S EXHIBIT No. 5

(See Opposite) ☞

STATE OF MISSOURI

DEPARTMENT OF STATE

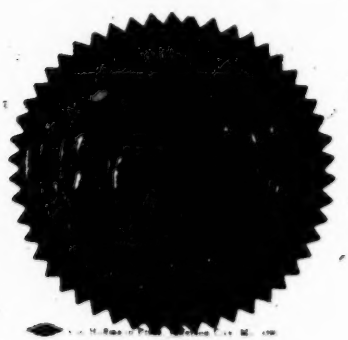
To all to Whom these Presents shall Come:

I, **Walter H. Toberman,** *Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, hereby certify that the annexed pages contain a full, true and complete copy of*

EXECUTIVE ORDER NO. 2

ISSUED BY GOVERNOR PHIL M. DONNELLY, JULY 5, 1967

as the same appears on file and of record in this office:



In Testimony Whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson, this 10th *day of* July *A. D., Nineteen Hundred and* sixty-seven.

Walter H. Toberman
SECRETARY OF STATE

MAY CLERK

441

[fol. 44?] EXECUTIVE ORDER No. 2

To the Secretary of State:

Whereas, I, Phil M. Donnelly, Governor of the State of Missouri, after investigation, by Executive Proclamation dated the fifth day of July, 1956, proclaimed:

(1) That the continued operation of the Laclede Gas Company, a public utility, is threatened as the result of a labor dispute.

(2) That interruption of the operation of the Laclede Gas Company, a public utility, is threatened as the result of a strike on the part of employees of the Laclede Gas Company who are members of Local No. 8-6 Oil, Chemical and Atomic Workers of America (AFL-CIO), Local No. 8-194 Oil, Chemical and Atomic Workers of America (AFL-CIO), and Local No. 8-109 Oil, Chemical and Atomic Workers of America (AFL-CIO).

(3) That the public interest, health and welfare are jeopardized as the result of the threatened interruption of the operation of such public utility.

(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1949, is necessary to insure the operation in Missouri of the Laclede Gas Company, a public utility.

Whereas, by Executive Order No. 1 dated July 5, 1956, I have taken possession of the plants, equipment and all facilities of the Laclede Gas Company, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest;

Now, Therefore, I, Phil M. Donnelly, Governor of the State of Missouri, by virtue of the authority vested in me by Section 295.180 of the Revised Statutes of Missouri, 1949, do hereby order as follows:

(1) That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is hereby authorized and directed to take possession of the plants, equipment and all facilities of the Laclede Gas Company

[fol. 443] in the State of Missouri or such parts of each of said plants, equipment and facilities as may be necessary for the purpose of carrying out the provisions of this Order, and to effect my Proclamation and Executive Order No. 1 declaring the public interest, health and welfare jeopardized, in order to insure that the said utility above mentioned is effectively operated in the interest of the people of this State to the end that they may have the benefit of necessary and essential public utility services.

(2) Said Daniel C. Rogers shall exercise the aforesaid authority as my agent forthwith, and he shall continue to exercise the aforesaid authority as my agent until and unless otherwise directed by me.

(3) All rules and regulations of the aforesaid utility governing the internal management and organization of the company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri.

(4) This Order shall take effect at 4:00 P. M., Central Standard Time, July 5, 1956.

Done this Fifth Day of July, 1956.

Phil M. Donnelly, Governor.

Attest:

Walter H. Toberman, Secretary of State; Will Davis, Chief Clerk.

Gas ☐ Elec ☐ Oil ☐ TO BE ON CONSUMERS PREMISES L.G.CO. Form 1231

DATE WORK TO BE DONE Town City — RESIDENCE PHONE — CUST. PHONE — DATE ORDER TAKEN 7-2-56

ADDRESS 8025 PARK LANE — OCCUPIED AS — FLOOR — WHEN WANT DONE

NAME B. BALK. — (ROUTE) — (FOLIO) — CHARGE $

NATURE OF WORK TO BE DONE 820 AM — CHARGE TO CUSTOMER YES ☐ NO ☐

No Gas —

SEND BILL TO — INITIATED BY

PHONED To — By

COMPL. BY FITTER — HELPER

DATE

TRAVEL ☐ YES ☐ NO

LEFT LAST JOB M.

ARRIVED THIS JOB. M.

LEFT THIS JOB M.

REPORT OF WORK DONE

METER NO. — SIZE — INDEX

ACCOUNT NO. — TRUCK NO.

WORK SATISFACTORILY COMPLETED

CUSTOMER SIGN HERE

GAS ON ☐ GAS ORDERED ☐ DRG. ON CONSUMERS PREMISES L.G.CO. Form 1251

DATE WORK TO BE DONE: 5/8 TOWN: St Louis VERBAL MAIL PHONE: CALL PHONE NO.: EV1-201 DATE ORDER TAKEN: 7/5/62

ADDRESS: 5653 Theodosia OCCUPIED AS: FLOOR: OWNER TENANT AGENT:

NAME: CHAS GREEN (ROUTE): (FOLIO): CHARGE $:

NATURE OF WORK TO BE DONE: Mother brought hose from hospital which belongs to Mrs Jones Mother unwilling to sign receipt for missing hose

CHARGE TO CUSTOMER: YES ☐ NO ☐

SEND BILL TO: ON ORDER OF

PHONED: TO: BY:

COMPL. BY: FITTER: HELPER:

DATE:

TRAVEL: YES ☐ NO ☐

LEFT LAST JOB: M.

ARRIVED THIS JOB: M.

LEFT THIS JOB: M.

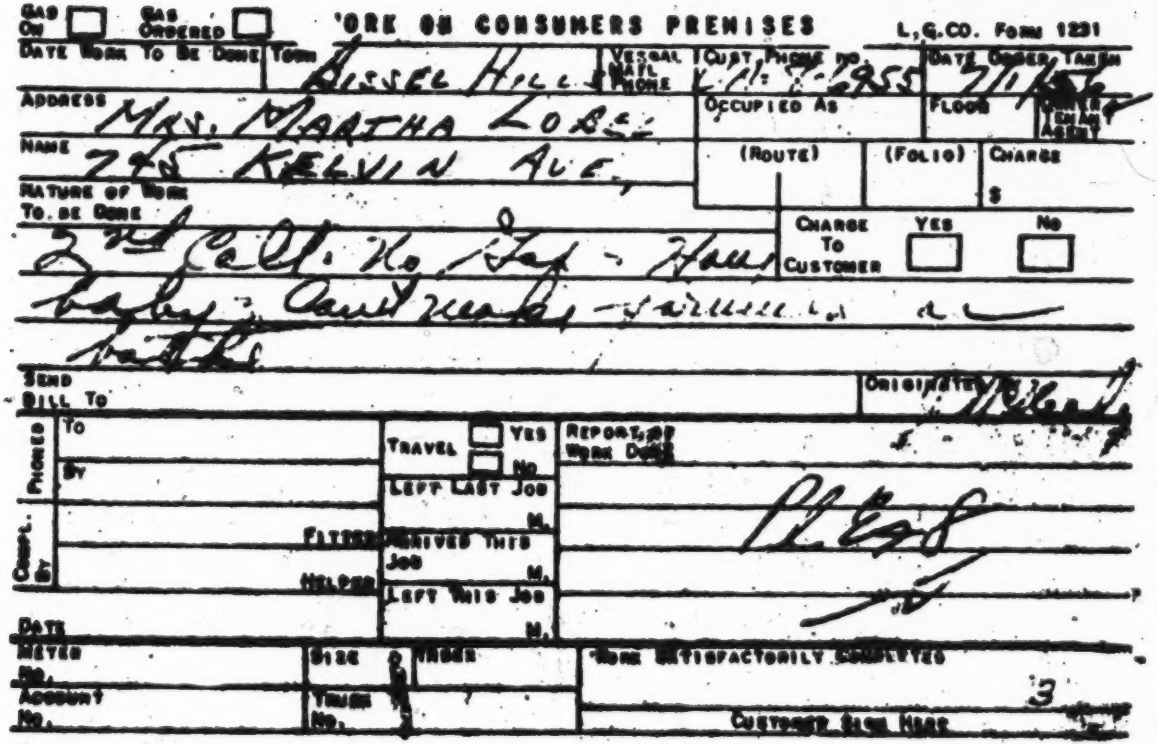
REPORT OF WORK DONE: Recd

METER No.: SIZE: INDEX:

ACCOUNT No.: TRUCK No.:

WORK SATISFACTORILY COMPLETED

CUSTOMER SIGN HERE


GAS ON ☐ GAS ORDERED ☐

'ORK ON CONSUMERS PREMISES

L.G.CO. FORM 1231

DATE WORK TO BE DONE | TOWN: Bissel Hill | VERBAL MAIL PHONE | CUST. PHONE NO. 1-Cl: 7-2855 | DATE ORDER TAKEN 7/10/56

ADDRESS: Mrs. Martha Lobe | OCCUPIED AS | FLOOR | TAKEN BY (INITIALS OF AGENT)

NAME: 245 Kelvin Ave. | (ROUTE) | (FOLIO) | CHARGE $

NATURE OF WORK TO BE DONE: 2nd Call. No Gas - Have baby. Can't reach - Phone Co

CHARGE TO CUSTOMER YES ☐ NO ☐

SEND BILL TO | ORIGINATED BY: Mabel

PHONED TO | BY | COMPL. BY | FITTER | HELPER | TRAVEL YES ☐ NO ☐ | LEFT LAST JOB M. | ARRIVED THIS JOB M. | LEFT THIS JOB M. | REPORT OF WORK DONE: Pl Exh

DATE

METER NO. | SIZE | MAKER | ACCOUNT NO. | TRUCK NO. | WORK SATISFACTORILY COMPLETED | CUSTOMER SIGN HERE

Gas On ☐ Gas Ordered ☐ WORK ON CONSUMERS PREMISES L.G.CO. Form 1291

Date Work To Be Done | Town: CITY | Cust. Phone No.: CE1-2741 | Date Order Taken: 11/15

Address: 4203 S. OLIVE | Occupied By: OWNER | Floor: 2

Name: DR. C. JUE | (Route) | (Folio) | Charge: $

Nature of Work To be Done: NO GAS

NEEDS GAS FOR STERILIZER

INSTRUMENTS

Charge To Customer: YES ☐ NO ☐

Send Bill To | Ordered By: MRS. OWEN

Promised: To / By | Travel ☐ Yes ☐ No | Report of Work Done

Compl. By | Fitter | Helper | Arrived This Job M. | Left This Job M. | Left Last Job M.

Date

Meter No. | Size | Number | Work Satisfactorily Completed

Account No. | Truck No. | Customer Sign Here

4

Gas On ☐ Gas Ordered ☐ WORK ON CONSUMERS PREMISES L.G.CO. Form 1234

Date Work To Be Done | Town: St. Louis | Voucher No. | Dist. Prem. No. 64-1-0377 | Date Order Issued 3/16/55

Address: 6209 Murdock Ave. | Occupied As: Res. | Floor | Date Completed

Name: Marie Moore | (Route) | (Folio) | Charges: 0

Nature of Work To Be Done: Lay Gas Extension & Relay Dr. Meter Inlet gas at this location. Instructed Customer to Re-engage a Plumber.

Charge To Customer: YES ☐ NO ☐

Send Bill To | Originated By: JJ

Phoned: To | By

Compl. By: Fitter | Helper

Travel: YES ☐ NO ☐

Left Last Job M.

Arrived This Job M.

Left This Job M.

Report of Work Done: 2 Gas H

Date

Meter No. | Size | Index | Work Satisfactorily Completed

Account No. | Truck No. | Customer Sign Here

GAS ON ☐ GAS ORDERED ☐ ORK OR CONSUMERS PREMISES L.G.CO. Form 1231

DATE WORK TO BE DONE | TOWN ST. LOO | VERBAL WITH PHONE | CUST. PHONE NO. 713-3619 | DATE ORDER TAKEN 7-5-56

ADDRESS 2143 ESTHER | OCCUPIED AS RES | FLOOR | METER LOCATION (WHERE)

NAME TWIEHAUS | (ROUTE) | (FOLIO) | CHARGE $

NATURE OF WORK TO BE DONE NO GAS | CHARGE TO CUSTOMER YES ☐ NO ☐

WATER COMIN' OUT OF THE FURNACE

SEND BILL TO | ORIGINATED BY H2

PHONED To / By

COMPL. BY FITTER / HELPER

TRAVEL ☐ YES ☐ NO

LEFT LAST JOB M.

ARRIVED THIS JOB M.

LEFT THIS JOB M.

REPORT OF WORK DONE

PL 12

DATE

METER No. | SIZE | INDEX

ACCOUNT No. | TRUCK No.

WORK SATISFACTORILY COMPLETED — 6

CUSTOMER SIGN HERE

GAS ON ☐ GAS ORDERED ☐ ORK ON CONSUMERS P[illegible]ISES L.G.CO. FORM 1231

DATE WORK TO BE DONE: 5/6 | TOWN: City | VERBAL MAIL PHONE | CUST. PHONE NO.: 211-[illegible]20 | DATE ORDER TAKEN: 5-5-36

ADDRESS: 5025 Lonsdale Ave | OCCUPIED AS | FLOOR | OTHER (GIVE PART ASSIGN.)

NAME: L. L. Eaton | (ROUTE) | (FOLIO): 85 | CHARGE: $

NATURE OF WORK TO BE DONE: No Gas Water was running in all appliances

CHARGE TO CUSTOMER: YES ☐ NO ☐

SEND BILL TO | ORIGINATED BY: J

PHONED: TO | BY

COMPL. BY: FITTER | HELPER

DATE

TRAVEL: YES ☐ NO ☐

LEFT LAST JOB M.

ARRIVED THIS JOB M.

LEFT THIS JOB M.

REPORT OF WORK DONE: Pilot 13 — 5

METER NO. | SIZE | INDEX

ACCOUNT NO. | TRUCK NO.

WORK SATISFACTORILY COMPLETED — 7

CUSTOMER SIGN HERE

FILE COPY

Office-Supreme Court, U.S.
MAR
Clerk

No. [redacted] 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Missouri, affirming as modified a final judgment of the Circuit Court, City of St. Louis, Missouri, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW.

The oral opinion of the Circuit Court, City of St. Louis (R. 261-262), Appendix A, pp. 15-16, *infra*, is not officially reported. Its decree (R. 263-265), and order amending decree (R. 285-286), are printed as Appendices B and C, respectively, pp. 17-19, 20-21, *infra*. The opinion of the Supreme Court of Missouri, as amended, Appendix D, pp. 22-48, *infra*, is reported at 317 S. W. 2d 309.

JURISDICTION.

The highest court of Missouri, rejecting contentions based on the Constitution of the United States, held valid the seizure-no-strike provisions of a Missouri statute popularly known as the King-Thompson Act. The opinion of the Supreme Court of Missouri was entered September 29, 1958, and its order modifying opinion and overruling appellants' petition for rehearing was entered November 10, 1958 (R. 438). Appellants' notice of appeal was filed in the Supreme Court of Missouri on January 23, 1959. Jurisdiction to review the decision by direct appeal is explicitly conferred on this Court by Title 28 United States Code § 1257(2).

QUESTION PRESENTED.

Whether Missouri may, consistently with the National Labor Relations Act, Article VI of the Constitution of the United States and the Fourteenth Amendment, apply to employees of a privately owned gas company which affects interstate commerce and to their collective bargaining representatives a statute which provides that in the event of a threatened or actual strike the State may "take possession" of the "public utility" and which makes it unlawful for employees of the Company after such "taking" to strike.

STATUTES INVOLVED.

Relevant provisions of the King-Thompson Act (Ch. 295 R. S. Mo., 1949) are summarized below and the entire Act is printed in Appendix E, *infra*, pp. 49-59. Relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U. S. C. § 141, *et seq.*), are printed in Appendix F, *infra*, pp. 60-62.

STATEMENT.

A. The Statutory Scheme by Which Missouri Outlaws Strikes in Public Utilities.

The King-Thompson Act declares (Section 295.010) that "heat, light, power, sanitation, transportation, communication, and water are life essentials of the people" and that "the possibility of labor strife" in industries supplying these services, defined as "public utilities" (Section 295.020(1)), "is a threat to the welfare and health of the people". The Act further declares that the "state's regulation of the labor relations affecting such public utilities is necessary in the public interest." (Section 295.010.)

Section 295.180(1) provides that if a strike, lockout or work stoppage occurs which, in the opinion of the Governor, "threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare", the Governor may "take immediate possession" of the utility. Section 295.180(2) provides that seizure may occur after investigation and proclamation by the Governor that "there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, * * * that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility * * *."

Section 295.200(1) provides that "after any plant, equipment or facility has been taken over by the state under this chapter" it "shall be unlawful for any person, employee or representative * * * to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state * * * as means of enforcing any demands against the utility or against the state." Violation entails the following consequences: A public utility

may not employ any person or employee who has participated in a strike after seizure except "as a new employee" (Section 295.200(2)); for each day after seizure that a labor organization or labor union allows a strike which it has called, incited or supported to continue, it "shall forfeit and pay to the state of Missouri * * * the sum of ten thousand dollars * * * to be recovered in civil action in the name of the state * * *" (Section 295.200(3)); every union officer who supports a strike after seizure forfeits and must pay to the State one thousand dollars (Section 295.200(4)). In addition, the courts of Missouri are empowered "to enforce by injunction or other legal or equitable remedies any provision of this chapter * * *." Section 295.200(6).

Section 295.180(2) provides that any public utility "taken" under the provisions of the Act "by reason of" a labor dispute "shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute".

B. The Missouri Statute Is Applied to Outlaw a Strike by Employees and Representatives of Employees of Laclede Gas Company.

Laclede Gas Company, a private corporation, hereinafter called the Company, is engaged in furnishing natural gas to industrial, commercial and domestic users in the St. Louis area (R. 30-31). Its operations affect interstate commerce within the meaning of the National Labor Relations Act (R. 400-401; 52-60).

Local 8-6, Local 8-109, and Local 8-194, Oil, Chemical and Atomic Workers International Union, hereinafter called the Locals, are labor unions which, under NLRB certifications, represent various units of Laclede's em-

ployees (R. 396; 61-62, 139, 143-144, 146-147).[1] Historically, contracts between the Locals and the Company predicate valuable employee benefits upon recognition of seniority in employment with the Company (R. 148-152, D. Exh. F, G and H). More than sixty (60) days prior to June 30, 1956, the expiration date of the then current collective bargaining contracts, the Locals notified Laclede of their desire to negotiate improved terms and conditions. In issue during negotiations were wages, vacations, making of riser connections and the like (R. 397; 145-147, 154-156, 79, 194-195, 196-197, 205-208). Pursuant to the provisions of the National Act, the Locals timely notified both the Federal Mediation and Conciliation Service and the Missouri State Board of Mediation of the existence of a labor dispute on these issues (R. 397; 195-198, 242). Negotiations continued through June 30, 1956 (R. 397; 208-209). When the old contract expired without agreement having been reached, the Locals went on strike (R. 397, 156-157, 209-210).

On July 3, 1956, Daniel C. Rogers, Chairman of the State Board of Mediation (R. 242), who, unlike officials of the Federal Mediation and Conciliation Service, had made no mediation or conciliation efforts in the dispute (R. 243, 245), met with officials of the Locals and urged them to call off the strike and return to work, stating that otherwise the Governor would be obliged to invoke the seizure law (R. 245-246).

On July 5, 1956, Governor Phil M. Donnelly issued a Proclamation and two Executive Orders (R. 397; 11-13-15, 29, 81) declaring that a labor dispute existed between Laclede and the Locals; that as a result Laclede's em-

[1] Local 8-6 represents the "physical" workers, Local 8-109 represents foremen, and Local 8-194 represents clerical workers (R. 396; 32). At all material times, each Local was in compliance with all relevant provisions of the Taft-Hartley Act (R. 137-138, 203-204).

ployees were on strike; that the strike threatened to interrupt Laclede's operations; that "the public interest, health and welfare are jeopardized as a result of the threatened interruption"; and that seizure under Section 295.180 was "necessary to insure" Laclede's "operation". By Executive Order No. 1, the Governor took "possession" of Laclede's facilities. By Executive Order No. 2 (R. 398; 81), the Governor appointed Daniel C. Rogers agent of the Governor to exercise the Governor's authority with respect to the seizure. The Order provided that all of Laclede's "rules and regulations * * * governing the internal management and organization of the Company and its duties and responsibilities shall remain in force and effect throughout the term of operation by the State of Missouri" (R. 398).

On the evening of July 5, 1956, Rogers, on behalf of the Governor, made a television broadcast concerning the effects of the seizure (R. 160, 169, 249). He stated that despite the seizure the striking employees were employees of the Laclede Gas Company, not of the State of Missouri (R. 170); that they will "report to work, when they wish to do so, to the Laclede Gas Company" (R. 171); that since they remain employees of Laclede the State of Missouri has no responsibility for their protection in the event of industrial injury or occupational disease and that only Laclede Gas Company is responsible therefor and for their coverage under the Unemployment Act and the Social Security Act (R. 171). He stated further that under seizure the employees were required to continue to render services to Laclede Gas Company; that "the obligation and responsibility falls upon the employees to stay at their jobs" to enable the Company "to render its public utility services to the people" (R. 172). He acknowledged that according to the Supreme Court of Missouri "seizure under the King-Thompson Act is token seizure" (R. 174); adding: "I don't

run the company or give the people any orders or anything of any kind. They are not working for me. I am merely the agent of the State here representing the Governor to observe and see to it that the property of the Laclede Gas Company is available for operation. The employees, of course, are supposed to operate the property under the directions of the Laclede Gas Company itself" (R. 174).[2] See also R. 80-84. Rogers further stated that "As of four o'clock today, Central Standard Time, five o'clock your time, the Proclamation and Executive Orders went into effect, and from that time on the employees are in violation of the law which provides that it shall be unlawful if, after seizure, they engage in a strike. So they are in violation of the law as of this time * * *. The employees, when the time arrives of a showing of resistance to the law, forfeit their seniority" (R. 174). He said that not only do the "employees forfeit their seniority rights" (R. 254), but that

2. At the hearing in this case, which began July 11 and ended July 13, 1956, Rogers testified that his seizure of the Laclede Gas properties consisted solely of delivering to the Company the Governor's proclamation and Executive Orders; that he "never was in the Laclede offices except that one time, and haven't been back since"; "that the State of Missouri is not * * * operating the Laclede Gas Company"; that Laclede, not the State of Missouri collects the receipts from the operations; that natural gas is purchased by Laclede Gas Company, not by the State; that neither he nor anyone else on behalf of the State or the Governor of the State was signing vouchers, disbursement slips, checks, or any other evidence of debt, or authorization for payment of debt (R. 255); that he did not have a Social Security number and did not intend to apply for one as an employer of employees of Laclede Gas Company (R. 256); that he has not put up any signs, notices, or anything else on the name plate or other Company identifications of its properties (R. 256); that none of the properties of Laclede Gas Company have been conveyed, transferred or turned over to him in any way (R. 256); that the Chairman of the Board and the President were fulfilling and discharging their functions in those offices for the Company; that they had not furnished any accounting or reports to the agent of the Governor and were not expected to account, and that the Superintendent of Production of the Company continued also to discharge the duties of the position without reporting or accounting to him (R. 256-257).

"the Union was subject to a fine of ten thousand dollars a day and * * * the officers are subject to one total fine of one thousand dollars each" (R. 254).

On July 7, 1956, the State of Missouri filed suit against the Locals, appellants herein, pursuant to Section 295.200 (3) of the King-Thompson Act, to collect the forfeitures provided therein for their failure to terminate the strike following the seizure[3] (R. 307-394). As noted by the court below (R. 399-400), this suit is still pending.

C. Proceedings Below.

On July 9, 1956, the State of Missouri, pursuant to Section 295.200(6), filed suit in the Circuit Court, City of St. Louis, to enjoin appellants from continuing the strike (R. 399; 2-11). Appellants filed a motion to dismiss and a petition for declaratory judgment alleging, *inter alia*, that the King-Thompson Act, as applied to employees of Laclede and their bargaining agents, is in conflict with the National Labor Relations Act, Section 8 of Article I, Article VI and the Fourteenth Amendment of the Constitution of the United States (R. 399; 15-27, 28, 258-260). In support of their petition appellants alleged that the constitutionality of the statute under which the Governor had acted was in serious doubt; that the Governor threatened to enforce the monetary forfeiture and loss of seniority provisions of the statute against appellants and members of appellant unions because of their refusal to terminate the strike after the seizure, and that in view of the great and irreparable injury to which appellants were subjected it was appropriate and necessary

3. The State of Missouri also filed suit against the individual officers of appellant unions under Section 295.200(4), to collect the sums forfeited by them as a result of their failure to call for termination of the strike after seizure. This action, like No. 46,664, is still pending in the Missouri courts.

to resolve the constitutional question by declaratory judgment (R. 259; 26-27). Appellants further alleged that the controversy over constitutionality will continue as long as the Governor deems himself free to apply the seizure-no-strike provisions to Laclede and to other companies whose activities affect interstate commerce; that the Governor's threat to enforce the Act in future labor disputes deprives defendants and their members and all employees and their bargaining agents similarly situated of their rights under the National Labor Relations Act and the Constitution of the United States and that it interferes with the system of free collective bargaining which Congress determined should govern labor relations in these industries (R. 26-27).

The trial court specifically found that the defendants "incited, supported and participated in * * * a work stoppage and strike against the Laclede Gas Company * * * subsequent to" the seizure (R. 264, 398; 8-9, 21, 183, 263). It found that this conduct was "unlawful" (*ibid.*). The court issued a declaratory judgment holding the Act constitutional and granted an injunction as prayed (R. 263-265, 285-286). On July 14, 1956, the day after the injunction issued, the strike was terminated (R. 399).

On appeal, the Supreme Court of Missouri affirmed, holding that the seizure-anti-strike provisions of the statute, as applied to labor disputes involving employers subject to the National Act, are constitutional (R. 421). It rejected the contention that because Laclede and the Locals had signed new contracts on August 10, 1956, and the Governor had terminated the seizure on October 31, 1956, the case for determination of constitutionality was moot (R. 399-400).

THE QUESTION IS SUBSTANTIAL.

1. In upholding the seizure-anti-strike provisions of the King-Thompson Act, the Supreme Court of Missouri followed the dissent, rather than the holding and opinion of the majority of the Supreme Court of the United States in *Amalgamated Ass'n of Street, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383. In Amalgamated this Court held that Congress deliberately preempted the field of economic strikes in public utilities whose operations affect interstate commerce; that Congress safeguarded against state infringement the right of employees of such utilities to strike, that neither federal occupation of the field nor federal protection of the right to strike may be subverted by the states on the theory that strikes in public utilities create "local emergencies".

On the premises of the *Amalgamated* decision the differences between the Missouri and Wisconsin statutes relied upon by Missouri (R. 173-174) are immaterial. Like Wisconsin, Missouri nullifies the federally protected right to strike. That nullification makes impossible resolution of the issues in dispute through free collective bargaining—the method relied on by Congress. True, Missouri, unlike Wisconsin, does not attempt to substitute for collective bargaining compulsory arbitration. But that sharpens rather than mitigates the conflict. Under compulsory arbitration, the issues are resolved at least by neutrals, not unilaterally by one of the contestants. Under the Missouri system, however, seizure imposes the pressure on the employer to yield to the employees' demands while it leaves the employees no choice but to work on the employer's terms. Thus, Missouri vests in the employer absolute power to decide and to fix terms and conditions of employment. If Wisconsin's substitute for collective bargaining is in conflict with federal policy, *a fortiori*

Bori, Missouri's must fall. Indeed, Congress squarely recognized that seizure, like compulsory arbitration, is antithetical to collective bargaining. It rejected both on the merits and not "because of any desire to leave the states free to adopt it". *Amalgamated* case, 340 U. S. 383, 395; and note 21; *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586.

Nor is it material that in Missouri a strike is outlawed only after executive determination that disruption of operations is threatened. Disruption of operations is a normal consequence of strike action. The question is not, as the Missouri Supreme Court conceived it, whether the consequences of interruption of a public utility service are such that exercise of state police power may be deemed reasonable. The question is rather whether Congress, by preserving the right of employees of public utilities to strike, and by refusing to exempt public utilities from the industries in which economic strikes are governed exclusively by federal law, precluded intervention of state power. This Court answered that question in *Amalgamated* when it rejected the contention "that Congress intended, by silence, to leave the states free to regulate 'local emergency' disputes." 340 U. S. 383, 393-394.

It is not claimed, and in the light of the Missouri Supreme Court's construction of the King-Thompson Act in *Rider* v. *Julian*, 282 S. W. 2d 484, 492-496, and the official position of the State in *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 819, 244 S. W. 2d 75, 84, and in this case (R. 251-253, pp. 6-7, *supra*), it could not be claimed, that seizure has the effect of transforming a utility's employees into employees of the State or making the State their employer. Thus, under this law, seizure

does not even arguably alter the preemptive applicability of the national Act.[4]

2. The Missouri Supreme Court correctly held that the case for declaratory judgment, ripe for adjudication when the trial court ruled (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 586), was not rendered moot by termination of the strike pursuant to the injunction, subsequent execution of contracts between Laclede and the defendants and consequent relinquishment of the seizure (R. 399, 400). As the trial court specifically found (R. 264), appellant Locals continued their strike after the seizure began from July 5, through July 14, 1956, in defiance of the Missouri Act's outlawry of such conduct. The Locals and their officers thereby subjected themselves to the substantial forfeitures which Missouri is now seeking to enforce (p. 8, *supra*). The employees jeopardized their seniority rights, which remain in doubt. Since liability for substantial penalties and potential loss of seniority turn upon the constitutionality of the seizure-no-strike provisions, it cannot be suggested that the case for determining constitutionality is moot. *So. Pacific Co. v. Interstate Comm. Comm.*, 219 U. S. 433, 452; *United States v. Rock Royal Co-op.*, 307 U. S. 533, 555-556; *Interstate Com. Comm'n. v. Hoboken Mfgr's R. Co.*, 320 U. S. 368, 376-377; *Amalgamated Assn., etc. v. Wisconsin Employment Relations Board*, 340 U. S. 416, 417, note 1; *Burrell v.*

4. Cf. Chapter 17, Title 56, Code of Virginia, Chapter 696, Acts of Assembly 1952, §§ 56-509—56-528. Accordingly, there is no occasion here to consider the effect of a contention that a state may, without offending the National Act, through exercise of its power of eminent domain, become the actual owner and operator of a utility, and hence an "employer" exempt by virtue of Sections 2(2) and 2(3) of the National Act from its limitations. Cf., however, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 586 and *Local 24, etc. v. Oliver*, 358 U. S. 283.

Martin, 232 F. 2d 33, 37-39, and note 16 (C. A. D. C.); *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 325 (C. A. 10).[5]

Execution of contracts after employees and their bargaining agents have been prohibited from continuing their strike would not, in any event, render moot the controversy concerning the constitutionality of the statute which authorized the prohibition. Settlement of a labor dispute after the right to strike has been denied is not the product of free collective bargaining; it is the fruit of the state's illegal interference with it. Cf. *Franks Bros. Company* v. *National Labor Relations Board*, 321 U. S. 702, 704-705. Discontinuance of an illegal restraint after success has made its perpetuation unnecessary, "does not operate to remove a case from the ambit of judicial power." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 308-309. Missouri may not escape review by this Court of the constitutionality of its intrusion into the pre-empted field by making execution of a contract after seizure the occasion for lifting its strike ban. To hold otherwise would allow Missouri to play hide-and-seek with federal supremacy. Cf. *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, 568.

5. *Harris* v. *Battle*, 348 U. S. 803, upon which the suggestion of mootness below was predicated, is wholly inapposite. There, no potential liability of any kind had been incurred prior to termination of the seizure. Under the Virginia law seizure has characteristics and consequences entirely different from those here involved. Thus, under the Virginia law the State undertakes to operate the utility *qua* employer for its own account. Ch. 17, §§ 56-512, 56-518, 56-520, 56-522. The utility's employees are under no obligation to apply for or accept employment by the State and their seniority rights with the utility are unaffected by their refusal to work during seizure. §§ 56-513—56-514. Neither the Union nor its officers are required to call off a strike after seizure. The only restraint imposed is that after seizure a union may not picket or otherwise attempt to prevent the State from obtaining employees or operating the utility. § 56-517. In the *Harris* case there was no claim or finding that appellants had in any way violated the statute.

In view of the pervasive threat to invoke seizure in future disputes, termination of the dispute which invoked this seizure could not moot the controversy. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 514-516; *United States* v. *Aluminum Company of America*, 148 F. 2d 416, 448 (C. A. 2). That threat itself impairs the guarantees of the federal Act in all industries which the Missouri Act encompasses. In these industries the employees and their bargaining agents, contrary to the intention of Congress, cannot formulate and press their collective bargaining demands in the expectation that ultimate resolution will depend upon the outcome of a conflict of economic forces (Cf. R. 177). As to them, the effectiveness of strike action measures the imminence of seizure, not collective bargaining success. While that situation continues the constitutionality of the Missouri scheme for outlawing public utility strikes remains ripe for adjudication.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Court should reverse the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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APPENDIX A.

ORAL OPINION OF THE CIRCUIT COURT, CITY OF ST. LOUIS, JULY 13, 1956. (R. 261-262.)

I would not say that the legal question involved in this case is a simple one. I think it is a narrow one. The question, as I see it, is whether these provisions—the seizure provisions—of the King-Thompson Act are constitutional or not; and I think that is the only question to be decided by me in this proceeding. The only cases I know of that bear directly on this Act are the *Julian* case and the *Pigg* case. In the *Pigg* case the court expressly stated that it was not passing on the constitutionality of the sections which are involved here. The other case—the *Julian* case as I call it—has nothing to do particularly with these sections, and the court stated the constitutional question was not properly raised. That means, then, that I face this question with no direct authority in this state, I grant that the *Amalgamated* case, which has been referred to, throws doubt on the constitutionality of this Act. However, as I read the case, and as I read the Wisconsin statute, there are material differences in the Wisconsin Act and this Act.

I think it is a firmly established principle in this state that a trial court should not declare an act of the General Assembly unconstitutional without it being clearly so. This act was passed by the General Assembly, the representatives of the people of this state, after debate and careful consideration, and it is the law of this state. I consider the *Amalgamated* case in this connection indirect authority, and not, in my mind, sufficiently direct on the act

involved here to declare it unconstitutional; and, for that reason, I will not do so. Close constitutional questions in general are, of course, to be determined by the upper courts. And, again, I say, unless it is clear to a trial judge that an act is unconstitutional he should not declare it so. I do not feel this is clearly so. Therefore, I am of the opinion that I should rule the act constitutional, and the injunction should issue. You may prepare a draft for my signature.

Your petition for a declaratory judgment of unconstitutionality will be denied.

APPENDIX B.

DECREE.
(R. 263-265.)

On July 14, 1956, the Court duly made and entered of record the following judgment, order and decree, which appears in Record Book 837 at page 235:

DECREE.

This cause having been heard heretofore, to-wit, on July 11, 12 and 13, 1956, on plaintiff's application for a temporary injunction and on the Order to Show Cause, heretofore issued by the Court on July 9, 1956, and it having been stipulated by and between the plaintiff and the defendants that the issues on plaintiff's petition for a permanent injunction should be submitted to the Court for a decision on the pleadings and on the evidence submitted to the Court on July 11, 12 and 13, 1956, and the whole matter having been duly heard and the cause submitted to the Court, and the Court being now fully advised in the matter does find the issues in favor of the plaintiff and against the defendants, and

Whereas, it appearing to the Court that the Governor of the State of Missouri, pursuant to the authority vested in him by Chapter 295, R. S. Mo. 1949, and particularly Section 295.180, R. S. Mo. 1949, took possession of the plants, equipment and all facilities of the Laclede Gas Company, a public utility, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 4:00 o'clock P. M., Central Standard Time, July 5, 1956, and

Whereas, it appearing to the Court that the defendant Unions, the defendant Officers of said Unions, and the defendant Employees of the Laclede Gas Company, including the defendants individually named, have incited, supported and participated in, as a joint and common cause, a work stoppage and strike against the Laclede Gas Company and in a refusal to work by said defendant employees for and on behalf of the State of Missouri in distributing, selling and furnishing gas to the customers of Laclede Gas Company through the plants, equipment and facilities of the Laclede Gas Company, all subsequent to the action of the Governor of the State of Missouri, in taking possession of the plants, facilities and equipment of the Laclede Gas Company, aforesaid, and

Whereas, it appearing to the Court that the action of the defendant Unions, defendant Officers and defendant employees in inciting, supporting and participating in said strike and concerted refusal to work for the Laclede Gas Company and the State of Missouri after said plants, equipment and facilities of the Laclede Gas Company had been taken over by the State of Missouri, as aforesaid, is unlawful, and

Whereas, it appearing to the Court that the defendant Unions, defendant Officers and defendant employees will continue to incite, support and participate in said strike and concerted refusal to work for the Laclede Gas Company and the State of Missouri, aforesaid, unless said defendants are restrained and enjoined by this Court, and

It appearing to the Court that the plaintiff is without adequate remedy at law in the premises:

It Is Ordered, Adjudged and Decreed that said defendants and all other persons to whom notice of this order of injunction may come, be and they are hereby permanently enjoined and restrained from continuing, inciting, supporting and participating in the work stoppage, refusal to work

and strike aforesaid against the Laclede Gas Company or the State of Missouri.

It Is Ordered, Adjudged and Decreed that defendants' petition for a declaratory judgment be denied.

The costs of this proceeding are adjudged against the defendants.

Done at the City of St. Louis, Missouri, July 14, 1956.

IVAN LEE HOLT, JR.,
Judge of the Circuit Court for the City of St. Louis, State of Missouri.

APPENDIX C.

ORDER OF COURT.
(R. 285-286.)

Plaintiff's motion to amend decr[illegible] denied as to Specification I and granted as to Specific[illegible]on II as hereinafter set out. Decree of July 14, 1956, amended by striking therefrom in the fourth and third lines from the bottom of the second page, "It is ordered, adjudged and decreed that defendants' petition for a declaratory judgment be denied," and inserting in lieu thereof the following:

"It is ordered, adjudged, and decreed on defendants' petition for a declaratory judgment that Chapter 295, R. S. Mo., 1949, and all portions thereof are valid, enforceable, constitutional, and not in violation or derogation of the Constitution of the United States or of the Constitution of the State of Missouri; that the acts performed by Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are valid and enforceable; that it is unlawful under said Chapter 295, R. S. Mo., 1949, for the defendants to incite, support or participate in any strike or concerted refusal to work for the Laclede Gas Company or the State of Missouri as a means of enforcing any demands against the Laclede Gas Company or the State of Missouri so long as the proclamation and executive orders issued on July 3, 1956, by Phil M. Donnelly, Governor of the State of Missouri, pursuant to the authority conferred upon him by Section 295.180, R. S. Mo., 1949, seizing the plants, equipment, and facilities of the Laclede Gas Company for the use and operation by the State of Missouri in the public interest shall remain in force and effect."

Defendants' motion to set aside decree of injunction, exceptions to decree of injunction, motion for declaratory judgment and motion for a new trial, all denied.

Done at the City of St. Louis, Missouri, August 17th, 1956.

IVAN LEE HOLT, JR.,
Circuit Judge.

APPENDIX D.

IN THE SUPREME COURT OF MISSOURI
En Banc.

No. 45,869.

In Office of Clerk of Supreme Court, September 29, 1958.

STATE OF MISSOURI, *Respondent,* *vs.* LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., *Appellants.*	Appeal from the Circuit Court of the City of St. Louis. Honorable Ivan Lee Holt, Jr., Judge.

The defendants have appealed from a judgment of the Circuit Court of the City of St. Louis enjoining them from continuing and participating in a work stoppage and strike against the Laclede Gas Company or the State of Missouri, the plaintiff in the action. The judgment also declared the Act upon which the action is based, Ch. 295, R. S. Mo. 1949, commonly known as the King-Thompson Act, to be valid and constitutional. The defendants are officers and members of Local Unions Nos. 8-6, 8-109 and 8-194 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. Laclede Gas Company, a Missouri corporation, is an operating gas utility engaged in the distribution and sale of gas in the metropolitan area comprising the City of St. Louis and St. Louis County.

On July 1, 1956, Laclede had approximately 2,500 em-

ployees. Approximately 1,700 production and distribution workers were represented by Local 8-6. About 100 foremen were represented by Local 8-109, and about 400 clerical workers by Local 8-194. At all times herein mentioned, these unions were duly certified by the National Labor Relations Board as representatives of such employees for the purpose of collective bargaining.

The expiration date of the labor agreements between Laclede and its employees was June 30, 1956, at midnight. More than sixty days before the expiration date, the employees, through their representatives, notified the company of their desire to modify the agreements. Notice of the labor dispute also was given to the Federal Mediation and Conciliation Service and to the Missouri State Board of Mediation. The labor dispute involved wages, vacations, making of riser connections and other matters. Negotiations for new labor agreements were initiated between the three local unions and Laclede and were continued through June 30, 1956. When the old contract expired without a new one being consummated, approximately 1,800 employees, represented by these three unions, went on strike pursuant to a strike vote previously taken. The strike began July 1, 1956 and picket lines were set up at all offices and locations of the company, about 10 in number. About 300 supervisory employees who were not members of these unions remained on duty and undertook to continue furnishing gas to the customers, but service could not be maintained for reasons hereinafter more fully discussed.

On the afternoon of July 5, 1956, the Honorable Phil M. Donnelly, governor of the State of Missouri, issued a Proclamation and two Executive Orders which were served upon the defendants and the managing officers of Laclede. This Proclamation and the Orders were designed to effect the seizure of the utility and continue its operation in the public interest by virtue of the authority vested in the

governor by the Constitution and the laws of Missouri, particularly § 295.180 of the King-Thompson Act. The Proclamation declared, after investigation, it was the governor's opinion that "the public interest, health and welfare are jeopardized" because of the interruption of the operation of the utility as a result of the labor dispute and strike and, further, that the exercise of the authority vested in the governor by § 295.180 was necessary to insure the continued operation in Missouri of the public utility.

Executive Order No. 1 stated that the governor took possession of "the plants, equipment, and all facilities of the Laclede Gas Company, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest," effective as of 4 o'clock p. m., July 5, 1956.

The governor's Executive Order No. 2 provided:

"(1) That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is hereby authorized and directed to take possession of the plants, equipment and all facilities of the Laclede Gas Company in the State of Missouri or such parts of each of said plants, equipment and facilities as may be necessary for the purpose of carrying out the provisions of this Order, and to effect my Proclamation and Executive Order No. 1 declaring the public interest, health and welfare jeopardized, in order to insure that the said utility above mentioned is effectively operated in the interest of the people of this State to the end that they may have the benefit of necessary and essential public utility services.

"(2) Said Daniel C. Rogers shall exercise the aforesaid authority as my agent forthwith, and he shall continue to exercise the aforesaid authority as my agent until and unless otherwise directed by me.

"(3) All rules and regulations of the aforesaid utility governing the internal management and organization of the

company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri."

The employees on strike did not return to work when the governor's Proclamation and Executive Orders were issued and served upon their representatives. On July 9, 1956, the State of Missouri in its sovereign right, filed suit seeking to restrain and enjoin the defendants from continuing the strike, basing its action upon Chapter 295 of the Revised Statutes of Missouri, and, particularly § 295.180 and § 295.200 and the governor's Proclamation and Executive Orders issued pursuant thereto. The defendants' pleadings, *inter alia*, attacked the constitutionality of the King-Thompson Act and the validity of the Proclamation and Executive Orders of the governor and of his agent acting thereunder and also sought a declaratory judgment that Chapter 295 was unconstitutional.

Trial of the case began on July 11, 1956, and concluded on July 13, 1956. The Court adjudged and decreed that the injunction be issued as prayed and held Chapter 295 was not unconstitutional and that the Proclamation and Executive Orders issued by the governor, pursuant to the authority conferred upon him by Section 295.180, were valid and enforcible. On July 14, 1956, the day after judgment was rendered, the striking employees returned to work.

Amici curiae urge us to dismiss the appeal on the ground the case is now moot. Going outside the record as permitted for this purpose, *State ex rel. Donnell v. Searcy*, 347 Mo. 1052, 152 S. W. 2d 8, 10(2), they assert that Laclede and its employees signed a labor agreement on August 10, 1956, and that the governor terminated his seizure of the utility on October 31, 1956, which was, however, after this appeal was taken. They contend that the injunction having expired by its own terms the appeal should be dismissed in accordance with our practice of refusing to pass on moot

questions. Neither the plaintiff nor the defendants join in this request.

Among other cases, the *amici curiae* cite *Pressler v. Doherty*, 364 Mo. 596, 265 S. W. 2d 404, 407 (4), which holds: "A question is moot when the question presented for decision seeks a judgment upon some matter which if judgment were rendered could not have any practical effect upon any then existing controversy." One factor to be considered is that seizures of utilities in similar situations are likely to occur again and it is in the public interest that the question of their validity be determined. Moreover, we know from our own records, No. 46,664, *State of Missouri v. Local No. 8-6 et al.*, that another action, growing out of the same transaction, is pending in the trial court against these defendant unions to assess monetary penalties pursuant to Section 295.200(3).

Where the matters connected with or growing out of the original cause have not been fully and finally disposed of and the questions presented are of public importance and likely to recur in the courts of the state, an appeal need not be dismissed as being moot although the immediate controversy has ceased to exist. *State ex rel. Atchison, T. & S. F. Ry. Co. v. Trimble*, 254 Mo. 542, 163 S. W. 860, 862(1). See also *Stegmann v. Weeks*, 279 Mo. 131, 214 S. W. 134, 135(2); *Morrison v. Hess*, Mo., 231 S. W. 997, 999(1); *Missouri Electric Power Co. v. Smith*, 348 Mo. 738, 155 S. W. 2d 113, 117(1); *State ex rel. Chubb v. Sartorius*, 351 Mo. 1227, 175 S. W. 2d 783, 785(1); *Morrison v. State*, Mo. App., 252 S. W. 2d 97, 100(2). This seems to be consistent with the practice in federal courts. *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37, 43, 65 S. Ct. 11, 89 L. Ed. 29; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, 514-516, 31 S. Ct. 279, 55 L. Ed. 310. We believe a justiciable controversy is presented in the circumstances of

this case. We reject the suggestion that the appeal should be dismissed as moot.

Ninety-nine per cent of the product distributed by Laclede was natural gas, all of which came from Louisiana or Texas. Natural gas was taken from pipe lines and put directly into the distribution system or in storage. In addition to other methods, Laclede maintains an underground storage reservoir in St. Louis County capable of accommodating in excess of two billion feet of gas. Large quantities of pipe fittings, meters and other supplies and products were also purchased by Laclede from outside the State of Missouri. For the year ending December 31, 1955, Laclede's gross revenue was in excess of $41,000,000. The defendants contend, and properly so, that Laclede Gas Company was engaged in interstate commerce and that its labor activities are subject to the Labor Management Relations Act, 1947. *Amalgamated Association* v. *Wisconsin Board*, 340 U. S. 383, 391, 71 S. Ct. 359, 95 L. Ed. 364; *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244 S. W. 2d 75, 80(8).

The defendants' first attack upon the constitutionality of the King-Thompson Act, Ch. 295 R. S. Mo. 1949, is that it contravenes Art. 1, Section 8, and Art. VI of the Constitution of the United States in that it conflicts with the National Labor Relations Act of 1935, as amended by the Labor Management Relations Act of 1947. The national labor relations laws were enacted pursuant to Section 8, Clause 3 of Art. I, which empowers Congress to regulate commerce among the several states. Art. VI, Clause 2, declares the Constitution and the laws of the United States made pursuant thereto to be the supreme Law of the Land.

The constitutionality of the King-Thompson Act was under attack on the same ground in the case of *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244

S. W. 2d 75. In the *Pigg* case, this court held the Act was severable, particularly those sections directly affecting the State Board of Mediation, its legal existence, powers and duties. 244 S. W. 2d 79(7). The first eight sections of the King-Thompson Act, Secs. 295.010-295.080, R. S. Mo. 1949, declaring state policy, defining terms, creating the Board and defining its duties, powers and mediation services, were held not to be in conflict with the Labor Management Relations Act, 1947, particularly in view of Secs. 203(c) and 203(b), 29 U. S. C. A. Secs. 172(c) and 173(b), which contemplate the existence of State Boards and cooperation with them. 244 S. W. 2d 80 (8, 9). Sections of the King-Thompson Act providing for public hearing panels, being Secs. 295.120-295.170, were held in the *Pigg* case not to require compulsory arbitration and not to be in conflict with the Labor Management Relations Act since both the federal and state acts "rely upon the force of public opinion to induce the parties to arrive at a voluntary agreement." 244 S. W. 2d 82(10). To the extent that those sections are a necessary predicate for the additional sections not reached for decision in the *Pigg* case, but with which we are now concerned, we reaffirm our previous holding that those sections are not unconstitutional as being in conflict with the federal Act.

The facts relied upon to rebut the presumption of constitutionality of the Act must specifically appear in the record. *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176, 185, 56 S. Ct. 159, 80 L. Ed. 138, 101 A. L. R. 853; *State ex rel. Kenosha Auto Transport Corporation* v. *Flanigan*, 349 Mo. 54, 159 S. W. 2d 598, 599 (2, 3). Judicial review will not be accorded constitutional questions which are not directly and necessarily involved in the particular legal situation presented on appeal. *Juengel* v. *City of Glendale*, Mo., 161 S. W. 2d 408, 409(2);

Kansas City, Mo. v. *Williams*, 205 F. 2d 47, 51(3), certiorari denied 346 U. S. 826, 74 S. Ct. 45, 98 L. Ed. 351.[1]

The essential facts in this case are that the governor, after investigation, proclaimed that the public interest, health and welfare were jeopardized as a result of the interruption of gas service caused by a strike of Laclede employees; executive orders were issued, the property of the utility was seized; and, when the employees failed to return to work, the state sought and obtained an injunction. The parts of the Act directly involved are Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 295.200 R. S. Mo. making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means. Under established principles, we will restrict our consideration to those sections directly involved.

The dominant purpose of the King-Thompson Act is the protection of the welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state.[2] Its provisions

1. The wisdom of our not passing on such questions until they are squarely before us is well stated in *West* v. *Spencer*, 238 Mo. 65, 141 S. W. 586, 588(2), as follows: "This rule has a tendency to exclude obiter; it points the distinction between a legal treatise on a general head of the law and a judicial opinion on a concrete case, and it saves trouble to those judges who come after us and are called to decide the question as vital and turning in some appeal."

2. Section 295.010, declaring the state policy is as follows: "It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest (L. 1947 V. I p. 358, § 1)."

are directed against both the utility and its employees for the purpose of protecting the patrons and the public generally. While it makes mediation services and public hearing panels available, it does not force these services upon the parties. This is consistent with the policy of the Labor Management Relations Act, 1947. The Act does not purport to be a complete set of labor relation laws.

Section 295.180 authorizes the governor to take possession of the utility property for the use and operation by the state of Missouri only when the parties to the labor dispute "engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in failure to continue the operation of the public utility, and threatens the public interest, health and welfare."

The State of Missouri has regulated the relations between public utilities and their patrons as far back as 1913 when the Public Service Commission was established. See Laws of Missouri 1913, p. 602, now Ch. 386, R. S. Mo. 1949. The Public Service Commission Law disclaims any intent to interfere with interstate commerce, "except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress." Laws of Missouri 1913, p. 651, Sec. 138; Sec. 386.030 R. S. Mo. 1949.

The right of a state to regulate and control public utilities operating within its borders is inherent and is referable to the police powers. Statutes with respect thereto being remedial should be liberally construed. *State ex rel. Laundry, Inc. v. Public Service Commission of Missouri*, 327 Mo. 93, 34 S. W. 2d 37, 42(2); *Atlantic Coast Line R. Co. v. North Carolina Corp. Comm.*, 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933; *Louisville etc. R. Co. v. Tennessee R. Comm.*, 19 F. 679; 73 C. J. S. 1006, Public Utilities § 11; 43 Am. Jur. 577, Public Utilities and Service § 10. Section 386.610 of our statutes provides that the Public Service

Commission Law "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice *between patrons and public utilities.*" (Emphasis supplied.)

Chapter 386 of the statutes deals generally with the public service commission, its powers and duties and procedure before it. Chapter 393 deals specifically with gas, electric, water and heating corporations. Sec. 393.130 provides that every such utility, including a gas company, is required by law to furnish and provide "such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Laws of Missouri 1913, p. 602.

It is quite clear that the "patrons" of Laclede Gas Company were not furnished with "safe and adequate" service after the strike began. The strike had been in progress for five days before the governor exercised his emergency powers and it was four days later before the state filed suit. The evidence demonstrates conclusively that the public health, safety and interest was jeopardized and that the governor had reasonable cause to take action.

The evidence showed that Laclede had approximately 364,000 customers, including domestic, industrial and commercial users. It was the only utility distributing gas in the area. Residential customers used gas for cooking, water heating, refrigeration and space heating. Practically all of the hospitals in the St. Louis area used gas for sterilization, hot water heating, cooking and space heating. Doctors and dentists in the area were also furnished with gas for their office purposes. Large housing projects were also among the company's customers.

During the first ten days of the strike, Laclede received in excess of 13,000 service calls concerned principally with complaints that the gas service had failed or that leaks existed in the streets. Records of typical cases involving

danger to health and safety were put in evidence by the state. The normal number of complaints concerning failure of gas service for such a period was about 100. There was testimony that "practically all the areas in our county system" had been denied gas service due apparently to the closing of shut-off valves by unauthorized persons. Areas within the city of St. Louis were without gas largely due to water being injected into the gas mains. Shut-off valves were locked in boxes which could be opened only by a special type of key. Certain employees had these keys prior to the strike and there was no way of telling if all of them had been turned in. Some members of fire departments throughout the city and county also had keys to these boxes. Instances were discovered by the police where water was injected into the gas mains. In one case, the hose from a water faucet was still connected and water was running into the gas pipe when the police arrived. Water in the gas system may shut off a customer's gas temporarily in travelling through the pipes to a low point in the system; and, after it has passed, the gas may come back on and escape through an open outlet, thereby creating a dangerous situation. Restoring gas service in any section requires the help of a great number of people. If the valve were merely turned on again, gas might escape through an open outlet and create an explosive or otherwise dangerous situation. It is necessary to shut off the gas at every meter, turn the gas back into the system, then turn on the gas for each customer and light the pilots. During the strike the company did not have sufficient employees to restore service once it had been turned off.

There were also reports of gas escaping into the sewer systems and causing gas fires which had to be extinguished. At one station, wires carrying electric current used for power were disconnected by the unscrewing and removing of three bolts. In trying to discover the trouble; the man

in charge of the plant came in contact with the wires and was severely burned. If the electric connection had not been restored in time, the seal of the gas tank would have been broken and the gas in the holder would have escaped. There was also evidence of tampering with the telemetric controls, which are instruments designed to keep the gas pressure at the proper amount in various sections of the distribution system. This created a danger in that gas lines might be ruptured by excessive pressure and flames on burning appliances might be dangerously increased. Arrangements were made with city and county police to protect the places where these telemetric controls were located, but the police could not furnish twenty-four-hour protection. The company also received numerous reports of escaping gas. Since natural gas has practically no odor, it was the practice of Laclede and other companies to add an odorant for safety purposes so that leaks could be detected more readily. This odorant, a liquid, was normally available to some of the employees. During the strike a bottle of this odorant was thrown through a window of the Forest Park office of the company, and other quantities of it were deposited at various places in the service area to give the impression that there were leaks where none existed.

When the strike began, the unions advertised in the newspapers that they were setting up crews to take care of emergency work and listed telephone numbers for the public to call. The defendants' evidence was that these crews responded to approximately 150 calls.

While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders.

Daniel C. Rogers, Chairman of the State Board of Mediation, told the union representatives that by their strike they had caused the service of a public utility to be discontinued and advised them that under the Public Service Commission Law, he felt that "they, as well as the company, were obliged to render continuous and safe service to the public." However, the employees did not resume their duties until the trial court rendered its judgment and decree.

"Employees of a public service corporation assume upon entering the service an implied obligation to perform their duties in such a manner as will enable the corporation to discharge its obligations to the public." 35 Am. Jur. 514. Master and Servant, Sec. 82. See also *Wilson* v. *New*, 243 U. S. 332, 353.

A utility in its relation to the state and the people it serves cannot be considered wholly separate and apart from its employees for without them the utility cannot function and render safe and adequate service.[3] The Public Service Commission law recognizes this and imposes penalties on employees as well as on utilities for their wrongful acts.

Section 386.570 imposes a penalty upon any corporation, person or public utility which violates or fails to comply with any provision of the constitution or any law of the state or any order of the commission. In like manner, § 386.580 makes it a misdemeanor for every officer, agent or employee of a public utility who violates or fails to comply with any provision of the constitution or of the laws

3. Section 10, Art. VII of the Labor Agreement of Local 56, dealing with work under adverse weather conditions, provides, *inter alia*, p. 43: "During inclement weather Leak Trucks shall do work of emergency nature only. (Emergency work includes turning on of service and answering of all leaks reported by the public.)" This contract, put in evidence by the defendants, expired June 30, 1956, but the portion quoted indicates a recognition of public obligation by the employees as well as by the utility.

of this state or any order of the commission.[4] This also has been the law of Missouri since 1913, presumably a valid enactment under the police powers of the state.

A local public utility occupies a favored position in that it is free from competition and has other privileges such as the right of eminent domain. These advantages inure to the benefit of the utility employees in the form of greater continuity and security of jobs and compensation. The demand for utility services is constant. Compensation of employees is an operating cost of the utility and the rate must be sufficient for the payment of such expenses. 73 C. J. S. 1040, Public Utilities, § 25, Note 15. The employees' duties are owed to the public though rendered through the utility. So long as the status of employee continues, the duty remains. Regulation by the state is necessary because utility service is not an individual, but a community problem. The state's representation of the public would be deficient if it did not have some right to control the conduct of employees through which the utility operates.

A strike or lockout which jeopardizes the public health, safety or interest is not a protected activity under the Labor Management Relations Act, 1947. Sec. 1(b) of the Act, 29 U. S. C. Sec. 141(b) provides: "Industrial strife which interferes with the normal flow of commerce and

4. "386.580. Employee of public utility guilty of misdemeanor, when.—Every officer, agent or employee of any corporation or public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any corporation, person or public utility of any provision of the constitution of this state or of this or any other law, or who fails to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids or abets any corporation, person or public utility in their or its failure to obey, observe and comply with any such order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, * * * is guilty of a misdemeanor * * *." Laws of Missouri 1913, p. 649.

with the full production of articles and commodities for commerce can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, *and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest.*" 61 Stat. 136. (Italics added.) This congressional declaration clearly indicates a purpose to subordinate such "acts and practices" to the public health, safety and interest. By use of the term "under law" state laws must have been intended as well as federal laws because historically and traditionally the state governments have been vested with the protection of the public health, safety and interest under their general police powers.

Consistent with the subordination of labor relation acts and practices which jeopardize the public interest is the 1947 amendment which makes it clear that Congress did not intend to remove any existing "limitations or qualifications" on the right to strike.[5] Sec. 13 as amended; 29 U. S. C. Sec. 163. The United States Supreme Court has recognized that violations of local laws enacted for the preservation of property rights and personal safety are

5. The National Labor Relations Board in *Marshall Car Wheel and Foundry Co.*, 107 N. L. R. B. 314, 315, recognized that there are employments in which the right to strike is subordinated by the nature of the employee's duties, stating: "In cases involving supervisory and plant-protection employees, the Board has recognized the validity of the general principle that the right of certain classes of employees to engage in concerted activity is limited by the duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as forseeably would result from their sudden cessation of work. We are of the opinion that this duty extends as well to ordinary rank-and-file employees whose work tasks are such as to involve responsibility for the property which might be damaged. Employees who strike in breach of such obligation engage in unprotected activity for which they may be discharged or subjected to other forms of discipline affecting their employment conditions."

without the protection of the federal Act. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, a "sit-down" strike; *International Union* v. *Wisconsin Board*, 336 U. S. 245, 258-265, 69 S. Ct. 516, 93 L. Ed. 651, intermittent work stoppages; *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 748-749, 62 S. Ct. 820, 86 L. Ed. 1154 and *United Automobile Workers* v. *Wisconsin Board*, 351 U. S. 266, 274-275, 76 S. Ct. 794, 100 L. Ed. 1162, mass picketing and violence against persons and property. This is consistent with Congressional intent as expressed in other Acts where the exercise of the police power by the local government is particularly suitable. For instance, the Natural Gas Act, 52 Stat. 821, expressly provides that it shall not apply to "local distribution of natural gas or to the facilities used for such distribution." 15 U. S. C. Sec. 717(b). This Act was passed June 21, 1938, three years after the original National Labor Relations Act. Congress would hardly expect the state to regulate and control the local distribution of natural gas and the facilities therefor without the governmental powers necessary to make its laws and orders with respect thereto effective.

There are also federal laws which have the effect of limiting and qualifying the right to strike. In *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31, 62 S. Ct. 886, 86 L. Ed. 1246, seamen of a ship whose home port was Philadelphia struck and refused to obey orders while in port at Houston. The discharge of the seamen was held to be justified because the strike was in violation of the federal mutiny laws. The national emergency provisions of the labor relations Act, 29 U. S. C., Sec. 176-180, have limited and qualified the right to strike and there is no question but that Congress could make unlawful and prohibit entirely strikes that jeopardize the national health, safety and interest. *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 588.

An absence of violence traceable to the defendants does not render this a "peaceful" strike. In *Senn* v. *Tile Layers Union*, 301 U. S. 468, 479, 57 S. Ct. 857, 81 L. Ed. 1229, the court stated: "The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence but absence of any unlawful act. It precludes the intimidation of customers. It precludes any form of physical obstruction or interference with the plaintiff's business." A strike such as this operates chiefly against the public. The utility loses no business because there is nowhere for the patrons to turn for service. The inevitable result of such a strike is to coerce and intimidate the customers contrary to laws made for their protection.

Both the utility and its employees failed in their duty to furnish the public with a continuous, safe and adequate supply of gas. This is in violation of the laws of Missouri and the orders of the Public Service Commission implicit in the approval of the corporate charter and the grant of the utility's franchise and permit. Such violation is made a misdemeanor by our statutes. Secs. 386.570 and 386.580. Further, our conspiracy statute, Sec. 556.120, provides: "If two or more persons shall agree, conspire, combine or confederate: First, to commit any offense; * * * or, sixth, to commit any act injurious to the public health or public morals, * * * shall be deemed guilty of a misdemeanor." The failure of the parties to agree upon a contract and the resultant strike does not excuse the violations. Such a strike if long continued would likely result in proceedings to suspend or revoke the utility's franchise or permit for violation of obligations provided by law.

The appellants contend this case is ruled by *Amalgamated Association* v. *Wisconsin Board*, 343 U. S. 383, but we do not think so. The statutes involved in the two cases are substantially different. One of the main differences is that the Wisconsin Act provided for compulsory arbitration

while the King-Thompson Act does not. The utility employees are not required to accept mediation services or the findings of the hearing panel under the Missouri Act. Voluntary agreements through collective bargaining are not abolished. The only limitation upon an employees' strike or a company's lockout is if the public interest is endangered. The Wisconsin Act provided for a ban on strikes and compulsory arbitration when an impasse was reached in negotiations. The Missouri Act, on the other hand, does not render a strike unlawful until the governor has determined that the public health, safety and interest is threatened and has seized the property "for the use and operation by the state of Missouri in the public interest." Section 295.180. The King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities as the Wisconsin Act appeared to be. Emergency legislation is justified under the police powers. 16 C. J. S. 972-973, Constitutional Law § 198. The purpose of seizure is the preservation of community life as encouraged and fostered by the state. The purpose of the Act is to protect its citizens against disaster. As previously indicated, we deem the strike in the circumstances in this case to be unlawful and, therefore, not a peaceful strike as the term is used in *Amalgamated Association* v. *Wisconsin Board*.

The King Thompson Act operates in the field of police powers and deals specifically with the relation between a utility including its employees, on the one hand, and the "patrons" and citizens of the community, on the other. The Taft-Hartley Act deals with interstate commerce and more particularly with the relations between employers and their employees. The dominant purposes of the two Acts are different; if there is any overlapping, it is incidental and not substantial. Only undue and discriminatory burdens on interstate commerce are forbidden. *Breard* v.

Alexandria, 341 U. S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, 35 A. L. R. 2d 335, rehearing denied 342 U. S. 843, 72 S. Ct. 21, 96 L. Ed. 637.

The exercise of the state police power is superseded only where repugnance or conflict with a federal act is so direct and positive that the two acts cannot be reconciled. *United Workers* v. *Laburnum Construction Co.*, 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025; *Breard* v. *Alexandria*, *supra*. As stated by Mr. Chief Justice Hughes in *Kelly* v. *Washington*, 302 U. S. 1, 10, 58 S. Ct. 87: "The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"

A growing number of decisions of the United States Supreme Court indicates a considerable area where state activity and regulation is permitted. Among the more recent cases are: *C. A. W.* v. *Russell*, 356 U. S. , 78 S. Ct. 932, 2 L. Ed. 2d 1030, and *Machinists Ass'n* v. *Gonzales*, 356 U. S. , 78 S. Ct. 923, 2 L. Ed. 2d 1018. Russell recovered damages for loss of earnings and malicious interference with his employment suffered when pickets prevented his entering his place of work. Gonzales, wrongfully expelled from his union, obtained a decree of restoration to membership and a money judgment. In each case a state court judgment was affirmed although the matters appeared to be partially within the jurisdiction of the National Labor Relations Board.[6] Police powers of the

6. See also: *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 748-751; *Algoma Plywood Co.* v. *Wisconsin Board*, 336 U. S. 301; *International Union* v. *Wisconsin Board*, 336 U. S. 245; *Garner* v. *Teamsters Union*, 346 U. S. 485, 488; *United Construction Workers* v. *Laburnum Construction Co.*, 347 U. S. 656; *Adams Dairy* v. *Burke, Mo.*, 293 S. W. 2d 281, cert. den. 352 U. S. 969; *United Auto Workers* v. *Wisconsin Board & Kohler Co.*, 351 U. S. 266, 274; *Amalgamated Clothing Workers* v. *Richmond (sic) Bros.*, 348 U. S. 511; *Gibaney* v. *Empire Storage and Ice Company*, 357 Mo. 671, 210 S. W. 2d 55, affirmed 336 U. S. 490.

state and their exercise as opposed to federal laws were involved in *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 749, wherein the Court stated that it would "not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several states" in regard to "such traditionally local matters as public safety and order and the use of streets and highways." The King-Thompson Act is predominately (*sic*) an extension of the regulation and control of public utilities in the public interest and as such is the exercise of "historical powers" of the state. So construed Sections 295.180 and 295.200(1) present no direct and irreconcilable conflict with the federal Act even without the aid of the subordination provisions of 29 U. S. C. Sec. 141. The Sections are therefore not unconstitutional.

Section 295.200(6) authorizes the courts in Missouri "to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder." The state has always been deemed to have the power to compel a public utility company to furnish service to the inhabitants of the territory it has undertaken to serve. *State ex rel. Ozark Power & Water Co.* v. *Public Service Commission of Missouri*, 287 Mo. 522, 229 S. W. 782, 785(2); *New York & Queens Gas Co.* v. *McCall*, 245 U. S. 345, 38 S. Ct. 122, 62 L. Ed. 337; 73 C. J. S. 1002, Public Utilities § 8a.

43 Am. Jur. 595, Public Utilities and Service, § 33 states: "A common use of the remedy of injunction against public utilities is to compel them to perform their obligations to the public, as, for example, the obligation to furnish service or supply a commodity." Among the cases cited in support of this statement is *North Carolina Public Service Co.* v. *Southern Power Co.*, C. C. A. 4, 282 F. 837, 33 A. L. R. 626, writ of certiorari dismissed 263 U. S. 508, 44 S. Ct. 164, 68 L. Ed. 413. See also 15 A. L. R. 2d 257-264.

Our general statute, Section 386.360, expressly providing for such relief in the public interest states that: "Whenever the commission shall be of the opinion that a * * * gas corporation, * * * is failing or omitting or about to fail or omit to do anything required of it by law or by order or decisions of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order or decision of the commission, it shall direct the general counsel to the commission to commence an action * * * for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions."

Section 295.210 is a savings clause similar to that contained in the Labor Management Relations Act, 29 U. S. C. Section 143. It provides: "No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent." It follows that § 295.200(6) is not in conflict with the federal Act and is, therefore, not unconstitutional.

The sections which we have considered are severable from and may stand independently of the remainder of the Act. Although the defendants argue strenuously to the contrary, no case is made in this record for determination of the constitutionality of § 295.090, pertaining to a written labor agreement of a minimum duration and § 295.200, subparagraphs 2, 3, 4 and 5, relating to monetary penalties and loss of seniority. We, therefore, refrain from expressing any opinion with reference thereto. *Wilson* v. *New*, 243 U. S. 332, 354; *Lolordo* v. *Lacy*, 337 Mo. 1097, 88 S. W. 2d 353, 360(19); *Beets* v. *Tyler*, 365

Mo. 895, 290 S. W. 2d 76, 82(16); *Logsdon* v. *Duncan*, Mo., 293 S. W. 2d 944, 946(1); *State ex rel. State Board of Mediation* v. *Pigg*, *supra*.

The appellants next charge that the King-Thompson Act is in violation of Art. I, § 29, of the Constitution of Missouri because the right to bargain collectively includes the right to strike. Section 29 provides: "That employees shall have the right to organize and to bargain collectively through representatives of their own choosing." This is to the same effect as § 7 of the amended National Labor Relations Act, 29 U. S. C. § 157, yet limitations on the right to strike are recognized under the federal law. The King-Thompson Act does not abolish the right of utility employees to strike, but only subordinates the right to the public interest. This is an exercise of the police power of the State which § 29 does not impair. See *City of Springfield* v. *Clouse*, 356 Mo. 1239, 206 S. W. 2d 539, 542, 544, and *Glidewell* v. *Hughey*, Mo., 314 S. W. 2d 749. We find no valid distinction which would prefer this over other constitutional guarantees of personal liberties which have been held to be subordinate to the police powers. *Breard* v. *Alexandria*, 341 U. S. 622, 642; *Prince* v. *Massachusetts*, 321 U. S. 158, 166-167.

Next appellants contend that Sec. 295.180, providing for seizure, is an unlawful delegation of legislative powers violative of Art. II, Sec. 1, of the Constitution of Missouri, 1945, in that it does not provide sufficient standards and guides for "carrying out the seizure provisions of the Act." The alleged deficiencies of the Act in this regard are not pointed out more specifically. Sec. 295.180 sets out in considerable detail the circumstances under which the governor may take possession of utility property. Sec. 295.200(1) makes a strike or concerted refusal to work thereafter unlawful and Sec. 295.200(6) vests the courts with jurisdiction to enforce the Act or any of

the governor's rules or regulations. We do not think the Act "fails to prescribe with reasonable clarity the limits of the power delegated," 42 Am. Jur. 341, Public Administrative Law, Sec. 44, or that it fails to state the purpose "with sufficient exactness to enable those affected to understand these limits." *U. S. v. Rock Royal Co-op, Inc.*, 307 U. S. 533. When the legislature has described the purpose or rule, matters of detail in administering the act may be left to the executive even though the exercise of discretion is involved. *Spitcaufsky v. Hatten*, 353 Mo. 94, 182 S. W. 2d 86, 109(60); *State ex rel. Crain v. Moore*, 339 Mo. 492, 99 S. W. 2d 17, 21(6). It is not necessary that statutes prescribe a rule of action where they deal with situations which require the vesting of discretion in a public officer such as where the discretion relates to a police regulation and is necessary to protect the public health, safety and welfare. *Ex parte Williams*, 345 Mo. 1121, 139 S. W. 2d 485, 490(10); *Kalbfell v. City of St. Louis*, 357 Mo. 986, 211 S. W. 2d 911, 915(3). See also 16 C. J. S. 575, Constitutional Law, Sec. 138 and 42 Am. Jur. 337, Public Administrative Law, Sec. 43. The assignment is denied.

Next the appellants attack Sec. 295.200(1) on the ground that it violates Secs. 2, 8, 9 and 10 of the Constitution of Missouri, and the First, Thirteenth and Fourteenth Amendments of the Constitution of the United States. Sec. 295.200(1) provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state."

First the appellants claim that the statute is so vague and

indefinite that it violates rights of free speech, peaceable assembly, due process and other constitutional guarantees. They say the statutory language is susceptible of different meanings and cite cases involving criminal statutes, which generally hold that due process requires the crime and its elements to be so clearly expressed that an ordinary person may know the lawful course. This is not a criminal statute, but in any event, we do not think the statute is fatally vague or indefinite. As stated in *United States* v. *Petrillo*, 332 U. S. 1, 8, 67 S. Ct. 1538, 91 L. Ed. 1877, the constitution does not require impossible standards and: "The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more."

Further the defendants contend that Sec. 295.200(1) is an "outright denial of the right of free speech" guaranteed in the First and Fourteenth Amendments to the United States Constitution and Sec. 8, Art. I of the Missouri Constitution and that the statute denies their rights to peaceably assemble for their common good, pursuant to Sec. 9, Art. I of the Constitution of Missouri. In support of these contentions, the defendants cite *Thornhill* v. *Alabama*, 310 U. S. 88, holding invalid a statute forbidding picketing; *Thomas* v. *Collins*, 323 U. S. 516, involving a state statute requiring labor organizers to register before soliciting union memberships; *Marx & Haas Jeans Clothing Co.* v. *Watson*, 168 Mo. 133, 67 S. W. 391, seeking to enjoin distribution of a circular regarding the plaintiff's labor practices; and *Ex parte Hunn*, 357 Mo. 256, 207 S. W. 2d 468, holding invalid the Madison Act, a state statute.

The cases cited by the defendants recognize that these constitutionally guaranteed rights are subject to regulation in the public interest. The circumstances under which

this may be done and to what extent is well-stated in an opinion by the late Chief Justice Vanderbilt of the Supreme Court of New Jersey in a case involving an attack upon a similar New Jersey statute, *State* v. *Traffic Telephone Workers Federation*, 2 N. J. 335, 66 A. 2d 616, 622, as follows: "It must be recognized that the statutes in question inevitably impinge upon the unfettered exercise of some of the constitutional guarantees asserted by the defendant union, but only out of deference, however, to the paramount significance of other public rights. That, as we have shown, is not an uncommon occurrence in the field of constitutional law. The immediate question is whether or not such restrictions on the absolute application of any constitutional guarantees come within the area delimited in the decisions of the Supreme Court of the United States as the ultimate arbiter of the meaning of the Federal Constitution as justifying such restrictions. The tests that the United States Supreme Court has laid down in this field, and particularly where freedom of speech, freedom of the press, and freedom of assembly are involved, are that such restraints are justifiable only 'to prevent grave and immediate danger to interests which the state may lawfully protect' and any such restraints must be reasonable."

Defendants make no showing that the statute interferes with their right of assemblage or freedom of speech as such. Nor does it prohibit picketing except as it may be an adjunct of the strike or concerted refusal to work. Moreover, picketing is not an unqualified right, but is also subject to the police power. See *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 503-504, 69 S. Ct. 684, 93 L. Ed. 834; *Building Service Employees Union* v. *Gazzam*, 339 U. S. 532, 536; and *International Brotherhood of Teamsters* v. *Hanke*, 339 U. S. 470, 474. *Teamsters Union* v. *Vogt, Inc.*, 354 U. S. 284, discusses the

more recent cases including *Thornhill* and concludes, 354 U. S. 293: "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." This statute is part of emergency legislation dealing with clear and present threats to the public health and welfare. It is a reasonable regulation and not unconstitutional on the grounds stated.

The defendants further say that § 295.200(1) denies utility employees and their representatives equal rights and opportunities under law, Art. I, § 2 of the Missouri Constitution, and equal protection of the laws under the Fourteenth Amendment. It is within the legislative authority to classify and deal with businesses affected with the public interest. *Munn* v. *Illinois*, 94 U. S. 113. The classification of utility employees and union representatives cannot be said to be lacking any adequate or reasonable basis. *Whitney* v. *California*, 274 U. S. 357, 370; *Wilson* v. *New*, 243 U. S. 332, 349. It is unnecessary for the state legislature to cover the whole field of possible abuses. *Hughes* v. *Super. Court of California*, 339 U. S. 460, 468.

Finally, the defendants say that § 295.200(1) imposes a form of compulsory service or involuntary servitude in violation of Amendment Thirteen of the Constitution of the United States. Section 295.210 is a saving provision similar to the one in the Labor Management Relations Act, 1947, 29 U. S. C. A., § 143. It provides in substance that no employee shall be required to render labor or service without his consent and that the Act shall not be construed so as to make the quitting of his job by an individual employee an illegal act. The defendants' interpretation of the § 295.200(1) is strained and unwar

ranted. It loses sight of the fact that the section under attack is directed against a strike or concerted refusal to work and has nothing to do with one or more quitting work of their own volition. The section does not have the purpose or effect of imposing involuntary servitude in violation of the Thirteenth Amendment. *Auto Workers v. Wisconsin Board*, 336 U. S. 245, 251.

In its amended judgment and decree entered August 17, 1956, the trial court found and declared that "Chapter 295, R. S. Mo., 1949, and all portions thereof are valid, enforceable, constitutional, and not in violation or derogation of the Constitution of the United States or of the Constitution of the State of Missouri." We have limited our inquiry and determination to §§ 295.010-295.080, 295.120-295.170, 295.180, 295.200(1) and 295.200(6). With respect to these sections, we have considered and denied all of defendants' claims of unconstitutionality.

As so limited and modified the judgment is affirmed.

CLEM F. STOECKMAN,
Judge.

APPENDIX E.

THE KING-THOMPSON ACT, R. S. MO. 1949, CHAPTER 295.

295.010. *Labor relations affecting public utilities—state policy.*—It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest.

295.020. *Definitions.*—1. The term "public utility" shall include any person engaged in the business of producing, distributing, selling or otherwise furnishing electric light or power, heat, gas, steam, water, sewer service, transportation excepting railroads, communication, or any one or more of them to the people of Missouri.

2. The term "person" means any individual, firm, copartnership, corporation, municipal corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

3. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a utility or group of utilities or by its or their employees to act or do for them.

4. The term "collective bargaining" shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions.

5. The term "labor dispute" shall involve any controversy between employer and employees as to hours, wages, and working conditions. The fact that employees have amicable relations with their employers shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes.

6. The term "employee" shall refer to anyone in the service of another, actually engaged in or connected with the operation of any public utility throughout the state.

7. The term "board" shall mean the state board of mediation.

295.030. *Governor to appoint state board of mediation —members—qualifications—terms—vacancy.*—1. Within thirty days after the effective date of this chapter the governor, by and with the advice and consent of the senate, shall appoint five competent persons to serve as a state board of mediation; two of whom shall be employers of labor, or selected from some association representing employers of labor, and two of whom shall be employees holding membership in some bona fide trade or labor union; the fifth shall be some person who is neither an employee nor an employer of labor and who shall be chairman of said state board of mediation.

2. Two members of said board shall be appointed for one year, two for two years, and one for three years, and all appointments thereafter shall be for three years or until their respective successors are appointed in the manner herein provided.

3. If a vacancy occurs in said Board by death or otherwise, at any time, the governor shall appoint some competent person having the same qualifications as his predecessor to fill the unexpired term.

295.040. *Oath of members—main office—meetings.*—Each member of said board shall, before entering upon the duties of his office, take and subscribe an oath to support the Constitution of the United States and this state and to demean himself faithfully in his office. The main office of the state board of mediation shall be in Jefferson City, but the board may hold meetings at any time or any place in the state whenever the same shall become necessary, and three members of the board shall constitute a quorum for the transaction of business.

295.050. *Duties of chairman.*—The chairman of the board shall devote his full time to his duties and shall have charge of the office of the board. He shall keep all records of the proceedings of the board, and shall supervise the work of the employees of the board, and shall have such other powers and duties as may be conferred, or imposed upon him by the board.

295.060. *Compensation and expenses of board members.*—The chairman of the board shall receive a salary of five thousand dollars per annum, payable monthly; each of the other members of the state board of mediation shall receive fifteen dollars per day for the time spent in the performance of their duties. All members shall receive traveling and other expenses incurred in the performance of their duties.

295.070. *Powers and duties of board.*—1. The state board of mediation shall have power to employ and fix the compensation of conciliators and other assistants and to delegate to such assistants such powers as may be necessary to carry out its duties under this chapter. The board

shall by regulation prescribe the methods of procedure before it.

2. The board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter under investigation by the board. In cases of refusal to obey a subpoena issued by the board the circuit court of Cole county or of any county where the person refusing to obey such subpoena may be found, on application by the board, shall have power to issue an order requiring such person to appear before the board and to testify and produce evidence ordered touching the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof.

295.080. *Labor disputes—action by board.*—1. Upon receipt of notice of any labor dispute between parties subject to this chapter, the board shall require such parties to keep it advised as to the progress of negotiations therein.

2. Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.

3. It shall be the duty of all parties to a labor dispute to respond to the summons of the board for joint or several conferences with it or with its representatives and to continue in such conference until excused by the board or its representative.

295.090. *Labor agreements — renewal.*— All collective bargaining labor agreements hereafter entered into be

tween the management of a utility and its employees or any craft or class of employees shall be reduced to writing and continue for a period of not less than one year from the date of the expiration of the previous agreement entered into between the management of the utility and its employees or if there has been no such previous agreement then for a period of not less than one year from the date of the actual execution of the agreement. Such agreement shall be presumed to continue in force and effect from year to year after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and shall also file a copy of such demands with the state board of mediation, at least sixty days before the original termination date of (*sic*) sixty days before the end of any yearly renewal period, or sixty days before any termination date desired thereafter.

295.100. *Changes in labor agreement — notice.*— 1. In the case of all existing labor contracts, agreements or understandings which do not provide for at least a sixty-day notice of desired changes and which contracts, agreements or understandings terminate after seventy days following the effecive date of this chapter, the parties thereto shall nevertheless inform, in writing, the other party or parties of any specific changes desired to be made in said contract, agreement or understanding and file a copy of such desired changes with the state board of mediation at least sixty days before the date fixed for the termination of said contract, agreement or understanding.

2. In the case of labor contracts, agreements or understandings terminating within seventy days after this chapter shall become effective, the parties thereto shall forthwith, or not later than ten days after the effective date of this chapter, inform the other party, in writing, of the specific changes desired to be made in said con-

tract, agreement or understanding and promptly file a copy of such demands with the state board of mediation.

295.110. *Changes in employment terms in absence of labor contract.*—Whenever, after the effective date of this chapter, a situation exists in any utility whereby employees are rendering services under terms and conditions which were not at the time this chapter becomes effective and which have not heretofore been the subject of the contract, and said employees desire to effectuate a change in the terms of employment or a utility desires to effectuate a change in said terms of employment then and in that event, it shall be the duty of the party desiring such change, not less than sixty days prior to the desired effective date thereof, to inform the other party in writing of the specific changes so desired in the manner in which they are desired, either by written contract or otherwise and to file a copy of such terms with the state board of mediation.

295.120. *Public hearing panel — members — powers — hearings.*—1. In the event that management of a utility and the representatives for collective bargaining purposes of any craft or group of employees of such utility shall not have reached and executed a final agreement in writing as to all conditions of employment affecting such employees on or before the termination date of any existing contract, agreement or understanding or any renewal thereof, or unless the parties shall have, before said date, agreed to submit any and all disputes between them to arbitation, the management of such utility and the representatives of such employees shall, within five days after such termination date, each designate, in writing, a person as a public hearing panel member and file such designation with the state board of mediation; the two persons so designated shall choose a third disinterested and impartial person and these three shall compose and act as a panel.

2. The panel shall promptly proceed and within fifteen days following their designation hold and complete public hearings on the specific changes so requested, to the contract, agreement or understanding. Said period of fifteen days may be extended by the mutual written consent of the parties. The panel shall give to each party full notice and opportunity to be heard, but the failure of either party to appear before the panel at the time and place fixed by it shall not deprive the panel of jurisdiction to proceed to a hearing and to make report thereon as herein provided.

295.130. *Appearance in person or by counsel—notice of hearing.*—Parties may be heard either in person or by counsel as they may elect, and the panel shall give due notice of all hearings to the employee or employees or their representatives and the public utility or utilities involved in the labor dispute.

295.140. *Selection of party representatives.*—Representatives for the purposes of this chapter shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other. Representatives of employees for the purpose of this chapter need not be persons in the employ of the utility.

295.150. *Report of hearing to governor:*—Within five days after closing such hearings the panel shall file with the governor, in writing, a report setting forth a statement of the controversy, a resumé of the evidence submitted to it and its recommendations based thereon.

295.160. *Appointment of representatives by board when not designated by parties.*—1. In the event either management of the utility involved or the representatives of the employees for collective bargaining purposes shall fail or neglect to designate, as herein provided, such a person to represent it upon the panel or the two so designated shall fail to agree upon the third member of the panel, within

ten days after the date fixed for the termination of such contract, agreement or understanding or upon failure to file such designations or any of them with the state board of mediation within said ten-day period, the state board of mediation shall appoint such person or persons, selecting in each case a person qualified by previous experience or employment to represent employers, employees or the public as the case may require.

2. Should both management and the representatives of the employees fail or neglect to designate representatives upon said panel within the time herein required, then the state board of mediation shall appoint a panel of three persons, to be selected as follows: one to represent management of the utility, giving the management forty-eight hours to select its preference from a list of five persons submitted by the board to the management before designating such person; one to represent the employees involved, giving their representative forty-eight hours to select their preference from a list of five persons submitted by the board to such representative, before designating such person; and one to act as the impartial third person. Failure on the part of either party to make such selection shall not prevent the board from appointing the members of the panel from the lists submitted.

295.170. *Proceedings not to supersede voluntary arbitration.*—Compulsory arbitration, as provided in this chapter, shall not be effective in disputes where voluntary arbitration is a part of the contract between the disputing parties. In the event that through the voluntary arbitration disputing parties cannot agree, the state board of mediation shall then enforce the compulsory arbitration as provided.

295.180. *Utility strike—power of governor.*—1. Should either the utility or its employees refuse to accept and abide by the recommendations made pursuant to the provi-

sions of this chapter and as a result thereof the effective operation of a public utility be threatened or interrupted, or should either party in a labor dispute between a utility and its employees, after having given sixty days' notice thereof, or failing to give such notice, engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, or in the event that neither side has given notice to the other of an intention to seek a change in working conditions, and there occurs a lockout, strike or work stoppage which, in the opinion of the governor, threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare, then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the public interest.

2. Such power and authority may be exercised by the governor through such department or agency of the government as he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, and that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility; provided, that whenever such public utility, its plant, equipment or facility has been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage or slowdown, or other cause, such utility, plant, equipment or facility shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute, and it shall thereupon be the duty of such utility to continue the operation of the plant, facility, or equipment in accord-

ance with its franchise and certificate of public convenience and necessity.

295.190. *Governor to prescribe rules and regulations.*— The governor is authorized to prescribe the necessary rules and regulations to carry out the provisions of this chapter.

295.200. *Unlawful acts—penalties—enforcement of provisions.*—1. It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state.

2. It shall be unlawful for any public utility to employ any person or employee who has violated paragraph 1 of this section except that such person or employee may be employed only as a new employee.

3. Any labor organization or labor union which violates paragraph 1 of this section shall forfeit and pay to the state of Missouri for the use of the public school fund of the state, the sum of ten thousand dollars for each day any work stoppage resulting from any strike which it has called, incited, or supported, continues, to be recovered by civil action in the name of the state and against the labor organization or labor union in its commonly used name.

4. Any officer of any labor organization or labor union representing employees of public utilities who participates in calling, inciting or supporting any strike in violation of paragraph 1 of this section shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of one thousand dollars to be recovered by civil action in the name of the state and against such officer.

5. Any public utility that engages in a lockout which

brings about a work stoppage shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of ten thousand dollars for each day of work stoppage caused by such lockout, said amount to be recovered by civil action in the name of the state and against the public utility; provided further, that if, upon any investigation, supported by competent evidence, by the state board of mediation, it shall appear that any public utility has refused to bargain collectively in good faith with its employees over the terms and conditions of employment, said state board of mediation shall certify such record and proceedings to the public service commission, and, upon consideration of the facts in such record and proceedings the public service commission shall find that the evidence justifies such action, it may revoke the certificate of convenience and necessity of such public utility or impose such other conditions upon such public utility as may be provided by law. Any such action by said public service commission shall be subject to review in the courts of this state in the same manner as other orders or decisions of said commission.

6. The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder.

295.210. *Meaning of law.*—No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

APPENDIX F.

THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively, safe-

guards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in

a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 42

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

BRIEF FOR APPELLANTS.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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JURISDICTION.

The highest court of Missouri, rejecting contentions based on the Constitution of the United States, held valid as applied to employees of an employer engaged in interstate commerce the seizure-no-strike provisions of a Missouri statute popularly known as the King-Thompson Act. Its judgment (R. 361), affirming as modified the final judgment of the Circuit Court of the City of St. Louis, was entered September 29, 1958, and its order modifying opinion and overruling appellants' motion for rehearing was entered November 10, 1958 (R. 374). Appellants' notice of appeal was filed in the Supreme Court of Missouri on January 23, 1959 (R. 1-4). Jurisdiction to review the decision by direct appeal is explicitly conferred on this Court by Title 28, United States Code § 1257(2). On May 4, 1959, this Court entered its order (R. 375), postponing further consideration of the question of jurisdiction to the hearing of the case on the merits, 359 U. S. 982. That question is discussed below at pp. 30-34.

QUESTION PRESENTED.

Whether Missouri may, consistently with the National Labor Relations Act, Article VI of the Constitution of the United States and the Fourteenth Amendment, apply to employees of a privately owned gas company which affects interstate commerce and to their collective bargaining representatives a statute which provides that in the event of a threatened or actual strike the State may "take possession" of the "public utility", makes it "unlawful" after such "taking" to strike, and authorizes the state courts to enforce the prohibition by injunction and other legal or equitable remedies.

STATUTES INVOLVED.

Relevant provisions of the King-Thompson Act (Ch. 295, R. S. Mo., 1949) are summarized below and the entire Act is printed in Appendix A, *infra*, pp. 37-47. Relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U. S. C. § 141, *et seq.*), are printed in Appendix B, *infra*, pp. 48-50.

STATEMENT.

A. The Statutory Scheme by Which Missouri Outlaws Strikes in Public Utilities.

The King-Thompson Act became effective September 10, 1947. Laws of Missouri, 1947, p. 358. It declares (Section 295.010) that "heat, light, power, sanitation, transportation, communication and water are life essentials of the people" and that "the possibility of labor strife" in industries supplying these services, defined as "public utilities" (Section 295.020(1)), "is a threat to the welfare and health of the people." The Act further declares that the "state's regulation of the labor relations affecting such public utilities is necessary in the public interest." (Section 295.010.)

Section 295.180(1) provides that if a strike, lockout or work stoppage occurs which, in the opinion of the Governor, "threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare," the Governor may "take immediate possession" of the utility. Section 295.180(2) provides that seizure may occur after investigation and proclamation by the Governor that "there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, * * * that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility * * *."

Section 295.200(1) provides that "after any plant, equipment or facility has been taken over by the state under this chapter" it "shall be unlawful for any person, employee or representative * * * to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state * * * as means of enforcing any demands against the utility or against the state." Violation entails the following consequences: It is "unlawful" for any public utility "to employ" any person or employee who has participated in a strike after seizure except "as a new employee" (Section 295.200(2)); for "each day" after seizure that a labor organization or labor union allows a strike which it has called, incited or supported to continue, it "shall forfeit and pay to the state of Missouri * * * the sum of ten thousand dollars * * * to be recovered by civil action in the name of the state * * *" (Section 295.200(3)); any union officer who supports a strike after seizure forfeits and must pay to the State one thousand dollars (Section 295.200(4)). The courts of Missouri are empowered "to enforce by injunction or other legal or equitable remedies any provision of this chapter * * *." Section 295.200(6).

Section 295.180(2) provides that any public utility "taken" under the provisions of the Act "by reason of" a labor dispute "shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute."

B. The Missouri Statute Is Applied to Outlaw a Strike by Employees and Representatives of Employees of Laclede Gas Company.

Laclede Gas Company, a private Missouri corporation, is engaged in furnishing natural gas to industrial, commercial and domestic users in the St. Louis area (R. 32-33, 55-56). For the year ending December 31, 1955

Laclede's gross revenue was in excess of $41,000,000 (R. 342; 62). During the same period its purchases from outside the State of Missouri, including natural gas, exceeded $20,000,000 (R. 61). Laclede's operations affect interstate commerce within the meaning of the Act (R. 342), and the National Labor Relations Board has uniformly asserted its jurisdiction over the Company's labor relations (R. 65, 147-152, 153-155).[3]

Local 8-6, Local 8-109, and Local 8-194, Oil, Chemical and Atomic Workers International Union, hereinafter called the Locals, are labor unions which, under NLRB certifications, represent various units of Laclede's employees (R. 338; 64-65, 147, 152-155). The predecessor of Local 8-6, which represents the production and maintenance workers (R. 338; 35, 148),[4] obtained recognition from the Company through strike action in 1935 (R. 147). Historically, contracts between the Locals and the Company predicate valuable benefits, terms and conditions of employment, upon recognition of seniority with the Company (R. 156-160, D. Exh. F, G and H).

More than sixty (60) days prior to June 30, 1956, the

3. Under the jurisdictional policy standards announced by the Board in 1954; it asserted jurisdiction over all local public utilities which had a gross revenue of $3,000,000, or more. *Greenwich Gas Company and Fuel Inc.*, 110 NLRB 564 (R. 210-211). Under the revised standards announced on October 2, 1958, the Board asserts jurisdiction "over all public utilities which do a gross volume of business of at least $250,000 per annum or which have an outflow or inflow * * * across State lines, of $50,000 or more per annum." *Sioux Valley Empire Electric Assn.*, 122 NLRB No. 18; 43 LRRM 1061. The Board pointed out that by the revision it "endeavored reasonably to ensure that its jurisdiction will be exercised over all labor disputes involving local public utilities which exert or tend to exert a pronounced impact on commerce." *Ibid.* See p. 29 *infra*.

4. Local 8-109 represents foremen; Local 8-194 represents clerical workers (R. 338; 34-35, 153, 154-155). At all material times, all Locals were in compliance with all relevant provisions of the Taft-Hartley Act (R. 144-145, 212-213).

expiration date of the then current collective bargaining contracts, the Locals notified Laclede of their desire to negotiate improved terms and conditions (R. 339; 82-83). In issue during negotiations were wages, vacations, making of riser connections and the like (R. 339; 68, 160-164, 217, 220). Pursuant to the provisions of the National Act, the Locals timely notified both the Federal Mediation and Conciliation Service and the Missouri State Board of Mediation of the existence of a labor dispute on these issues (R. 339; 69, 166, 203-207, 255). Negotiations continued through June 30, 1956 (R. 339; 219). When the old contract expired without agreement having been reached, the Locals went on strike (R. 339; 164-165, 218-220). All employees in the bargaining units represented by the Locals, approximately 2200, participated in the strike; supervisors and others outside the units, approximately 300, remained at work (R. 36).

Shortly before the strike began, Mr. Ramsey, Laclede's Vice President in Charge of Personnel, asked the Locals' negotiating committee whether the Union intended to set up "emergency crews" (R. 242-243, 220-221). He was advised that "the Union would set up a sufficient amount of people to handle any emergency out of our union office, and that we had additional telephones [and] would answer the calls of the public" (R. 221-222, 243). Laclede made no other proposal for handling emergency calls (R. 222). The public was notified by advertisements in the newspapers on the morning of July 1, of the availability of emergency service during the strike, and of the telephone numbers to call (R. 348; 71, 89, 222-223).[5]

5. The emergency crews, composed of employees of the Service and Installation department who normally performed this work (R. 222, 242), were on duty during the strike on a twenty-four hour basis, providing more extensive emergency coverage than the Company maintained during normal operations on weekends and holidays (R. 194-195, 242-243, 72). Applying the same standard for distinguishing between "emergency" and "non-emergency"

On July 3, 1956, Daniel C. Rogers, Chairman of the State Board of Mediation (R. 254), who, unlike officials of the Federal Mediation and Conciliation Service (R. 166), had made no mediation or conciliation efforts in the dispute (R. 182, 219, 256, 257-258), met with officials of the Locals. He told them that by engaging in a strike against a public utility they were violating their obligation under the Public Service Commission Law under which "they, as well as the company, were obliged to render continuous and safe service to the public" (R. 348; 258-259). He urged them to call off the strike and return to work for the Company, stating that otherwise the Governor would be obliged to invoke the seizure law (R. 258-259).

On July 5, 1956, Governor Phil M. Donnelly issued a Proclamation and two Executive Orders (R. 339; 15-18, 31-32, 378-379), declaring that a labor dispute existed between Laclede and the Locals; that as a result Laclede's employees were on strike; that the strike threatened to interrupt Laclede's operations; that "the public interest, health and welfare are jeopardized as a result of the threatened interruption"; and that seizure under Section 295.180 was "necessary to insure" Laclede's "operation". By Executive Order No. 1, the Governor took "possession" of Laclede's facilities. By Executive Order No. 2 the Governor appointed Daniel C. Rogers agent of the Governor to exercise the Governor's authority with respect to the seizure. The Order provided that all of Laclede's "rules and regulations * * * governing the internal management

calls which they applied during periods of normal operation (R. 247, 225), the dispatchers received approximately 150 emergency calls between July 1 and July 13, to all of which the emergency crews responded (R. 348; 133, 222-229, 233-234, 243). During normal times, there are some two thousand unrepaired gas leaks in the Company's system in St. Louis County (R. 225). Calls concerning street leaks are not treated as emergencies, and repairs are often not made at all, unless the gas is leaking into a house or building (*Ibid.*, cf. R. 346).

and organization of the Company and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri" (R. 379). The defendant unions continued the strike (R. 340; 13-14, 24, 174, 191).

On the evening of July 5, 1956, Rogers, on behalf of the Governor, made a television broadcast concerning the effects of the seizure (R. 178, 262, 264). He stated that despite the seizure "the striking employees * * * are working for the Laclede Gas Company. They are not employees of the State of Missouri"; that they will "report to work, when they wish to, to the Laclede Gas Company" (R. 179); that since they remain employees of Laclede the State of Missouri has no responsibility for their protection in the event of industrial injury or occupational disease and that only Laclede Gas Company is responsible therefor and for their coverage under the Unemployment Act and the Social Security Act (R. 180, cf. 264). He stated further that seizure "require[d] the employees to continue to render services to the Laclede" Gas Company; that "the obligation and the responsibility falls on the employees to stay at their jobs" because without them the Company is unable to "render its public utility services to the people" (R. 180-181). He acknowledged that according to the Supreme Court of Missouri (see *Rider* v. *Julian*, 365 Mo. 313, 282 S. W. 2d 484), "seizure under the King-Thompson Act is token seizure"; adding, "I don't run the company or give the people any orders or anything of any kind. They are not working for me. I am merely the agent of the State here representing the Governor to observe and see to it that the property of the Laclede Gas Company is available for operation. The employees, of course, are supposed to operate the property under directions of the

Laclede Gas Company itself." (R. 182, cf. 265).[6] See also R. 84-87.

Rogers further announced that "As of four o'clock today Central Standard Time, five o'clock your time, the proclamation and executive orders went into effect, and from that time on the employees are in violation of the law which provides that it shall be unlawful if, after seizure, they engage in a strike. So they are in violation of the law as of this time * * *. The employees, when the time arrives of a showing of resistance to the law, forfeit their seniority" (R. 183). He said that not only do the "employees forfeit their seniority rights", but that "the union was subject to a fine of ten thousand dollars a day and * * * the officers are subject to one total fine of one thousand dollars each" (R. 267).

On July 7, 1956, the State of Missouri filed suit against the Locals, appellants herein, pursuant to Section

6. At the hearing in this case, which began July 11, and ended July 13, 1956, Rogers testified that his seizure of the Laclede Gas properties consisted solely of delivering to the Company the Governor's proclamation and Executive Orders; that he "never was in the Laclede offices except that one time, and haven't been back since" (R. 267); "that the State of Missouri is not * * * operating the Laclede Gas Company"; that Laclede, not the State of Missouri, collects the receipts from the operations; that natural gas is purchased by Laclede Gas Company, not by the State (R. 268); that neither he nor anyone else on behalf of the State or the Governor of the State was signing vouchers, disbursement slips, checks, or any other evidence of debt, or authorization for payment of debt; that he did not have a Social Security number and did not intend to apply for one as an employer of employees of Laclede Gas Company (R. 268); that he has not put up any signs, notices, or anything else on the name plate or other Company identifications of its properties; that none of the properties of Laclede Gas Company have been conveyed, transferred or turned over to him in any way; that the Chairman of the Board and the President were fulfilling and discharging their functions in those offices for the Company; that they had not furnished any accounting or reports to the agent of the Governor and were not expected to account, and that the Superintendent of Production of the Company continued also to discharge the duties of the position without reporting or accounting to him (R. 268-270).

295.200(3) of the King-Thompson Act, to collect the forfeitures provided therein for their failure to terminate the strike following the seizure, No. 92,766-D (R. 313-317). In its opinion herein, the court below took judicial notice of this proceeding, which is now pending in the trial court (R. 341).[7]

C. Proceedings Below.

On July 9, 1956, the State of Missouri, pursuant to Section 295.200(6), filed suit in the Circuit Court of the City of St. Louis to enjoin appellants from continuing the strike (R. 340-341; 7-18). Appellants filed an answer, motion to dismiss and a petition for declaratory judgment (R. 340-341; 19-30, 82, 270-272). Admitting that they had continued the strike after seizure (R. 24), they alleged, *inter alia*, that the King-Thompson Act, as applied to employees of Laclede and their bargaining agents, is in conflict with the National Labor Relations Act, Section 8 of Article I, Article VI and

7. The State of Missouri also filed suit against individual officers of appellant unions under Section 295.200(4), to collect the forfeitures incurred by them as a result of their failure to call for termination of the strike after seizure. The State seeks to recover $1,000, each, from five individual defendants, each of whom is an appellant herein. This action, No. 92,765-D, is still pending in the Missouri courts. Shortly after July 13, 1956, the State of Missouri filed another suit against appellant Locals to collect additional forfeitures under Section 295.200(3) for their continuation of the strike from "July 7, 1956 to July 13, 1956." This suit No. 93,089-D) is also still pending. In No. 92,766-D, the State seeks to recover $10,000 each from the three Locals; in No. 93,089-D, it seeks to recover $70,000 each, a total of $240,000.

8. The record in that case came before the Supreme Court of Missouri, where it was docketed as No. 46,664, on appeal by the defendants from an order of the trial court, entered August 7, 1957, sustaining plaintiff's amended motion to dismiss defendants' counter petition for a declaratory judgment (R. 333-334; 336-337). The motion was predicated principally on the ground that the declaratory judgment in the instant case was *res judicata* of the issues raised by the plea for declaratory judgment therein (R. 331-332). On motion of appellee, the Supreme Court of Missouri, July 14, 1958, dismissed the appeal as premature.

the Fourteenth Amendment of the Constitution of the United States (R. 340-341; 25-30). In support of their application for declaratory judgment appellants alleged that the constitutionality of the statute under which the Governor had acted was in serious doubt; that the Governor threatened to enforce the monetary forfeiture and loss of seniority provisions of the statute against appellants and members of appellant unions because of their refusal to terminate the strike after the seizure, and that in view of the great and irreparable injury to which appellants were subjected it was appropriate and necessary to resolve the constitutional question—whether defendants were entitled to continue to strike after seizure—by declaratory judgment (R. 29-30, 271-272). Appellants further alleged that the controversy over constitutionality will continue as long as the Governor deems himself free to apply the seizure-no-strike provisions to Laclede and to other companies whose activities affect interstate commerce; that the Governor's threat to enforce the Act in future labor disputes deprives defendants and their members and all employees and their bargaining agents similarly situated of their rights under the National Labor Relations Act and the Constitution of the United States and that it interferes with the system of free collective bargaining which Congress determined should govern labor relations in these industries. (*Ibid.*)

The trial court specifically found that the defendants had unlawfully "incited, supported and participated in * * * a work stoppage and strike against the Laclede Gas Company * * * subsequent to" the seizure (R. 276; cf. 340, 348; 24, 191). On defendants' petition for declaratory judgment, the court rejected defendant's objections and declared the entire Act constitutional and valid (R. 295). It "ordered, adjudged and decreed" that the seizure was valid and enforceable, and that it was "unlawful * * * for the defendants to incite, support or participate in any strike or

concerted refusal to work for the Laclede Gas Company or the State of Missouri as a means of enforcing any demands against the Laclede Gas Company or the State of Missouri so long as" the Governor's seizure proclamation and orders "shall remain in force and effect." *Ibid.* The court issued an order as prayed, enjoining the appellants from "continuing, inciting, supporting and participating" in the strike (R. 277). On July 14, 1956, the day after the injunction issued, the strike was terminated (R. 341).

On appeal, the Supreme Court of Missouri limited its consideration to the seizure-no-strike provisions of the statute (R. 344). It held that, as applied to an employer like Laclede, who is concededly subject to the National Act, there is no conflict or material inconsistency between those provisions and federal law (R. 353, 354, 356, 361). It rejected the suggestion that because Laclede and the Locals had signed new contracts on August 10, 1956, and the Governor had consequently terminated the seizure on October 31, 1956, the case for determination of constitutionality was moot (R. 341-342).

SUMMARY OF ARGUMENT.

I.

A. The Missouri seizure-no-strike scheme offends federal policy in two respects: (1) it denies the right to strike and curtails the exercise of that right and (2) it frustrates free collective bargaining, the system for establishing wages, hours and working conditions which Congress decided should govern in local public utilities which affect interstate commerce. *Amalgamated Ass'n of Street, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1951), controls this case. Here, as there, a state has made it unlawful to strike where the strike will interrupt "essential public utility services." *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 474-475.

The reasoning by which the court below upheld the Missouri Act follows the dissent rather than the opinion of the majority in *Amalgamated*. The contention that utility employees owe a special duty to serve the public which qualifies and supersedes their right to strike when interruption of utility service is threatened was advanced by the dissent and rejected by the majority in *Amalgamated*. Cf. *Teamsters Union* v. *Kerrigan Iron Works*, 353 U. S. 968. This Court found that contention incompatible with Congress' extension of the Act to public utilities without qualification; with its refusal to qualify or limit the right of employees of public utilities to strike; with its determination that the system of free collective bargaining should be preserved in privately owned public utilities as in all other enterprises subject to the Act; and with its rejection of proposals for denying the right to strike in "emergencies". "Creation of a special classification for public utilities is for Congress,

not for this Court * * *." *Amalgamated* case, 340 U. S. 383, 392-393.

The contention that exercise of state power to curtail the right to strike is not barred where its purpose is to maintain public utility service rather than to regulate labor relations is equally foreclosed. Where state regulation impairs the exercise of a Section 7 right, the rationale of the regulation and the interest which the state seeks to serve thereby is irrelevant; the regulation must fall. *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 479-480. Moreover, Missouri's token seizure scheme, designed "to prevent work stoppages", is a "technique to solve labor disputes." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586.

That Missouri, unlike Wisconsin, does not attempt to substitute for collective bargaining compulsory arbitration sharpens rather than mitigates the conflict resulting from its denial of the right to strike. Under compulsory arbitration the issues in dispute are resolved by neutrals, not unilaterally by one of the contestants. Under the Missouri seizure system outlawry of the strike imposes no pressure on the employer to yield to the employees' demands while it leaves the employees no choice but to work on the employer's terms. Moreover, Congress explicitly rejected seizure, just as it rejected compulsory arbitration, as a technique for resolving labor disputes in public utilities. It did so on the merits and not "because of any desire to leave the states free to adopt it." *Amalgamated* case, 340 U. S. 383, 395, and note 21. Just as a state is not "free to regulate 'local emergency' disputes" under a compulsory arbitration-no-strike statute (*Amalgamated* case, 340 U. S. 383, 393), so it is not free to do so under a seizure-no-strike statute.

The facts show, and the Supreme Court of Missouri has squarely held, *Rider* v. *Julian*, 365 Mo. 313, 282 S. W. 2d

484, that the state is not during seizure the "employer" of the utility company's employees in any sense. Consequently, it cannot be contended in this case that because of the exemption of states from the category of "employer" by Section 2(2), when seizure occurs the National Act ceases to apply to the dispute. Since under the Missouri law the private utility company remains the employer, seizure cannot alter the preemptive applicability of the National Act.

B. The 86th Congress affirmed and reenacted the rule of the *Amalgamated* case. It voted down (105 Cong. Rec. 6044), Senator Holland's amendment, designed to overrule *Amalgamated*, which provided that (105 Cong. Rec. 6037):

> Nothing in this Act or the Labor Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulate or qualify the right of employees of a public utility to strike, or which prohibit strikes by such employees.

Congress did adopt an amendment of the National Act designed to change the rule of *Guss* v. *Utah Labor Relations Board*, 353 U. S. 1, insofar as that case held that refusal by the Board to assert its jurisdiction over a labor dispute does not operate to lift the supersedure of state power. Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, Section 701(a). But by the same amendment Congress prohibited the Board from declining to assert its jurisdiction over any labor dispute covered by its policy standards in effect on August 1, 1959. Under those standards the Board asserts jurisdiction, *inter alia*, "over all labor disputes involving local public utilities which exert or tend to exert a pronounced impact on commerce." *Sioux Valley Empire Electric Assn.*, 122 NLRB No. 18. Thus, Congress applied the preemption rule specifically to local public utilities. Now, less than ever, is creation of "a special classification for public utilities"

or "local emergencies" a job for this Court. Cf. the
sent in the *Amalgamated* case, 340 U. S., at 403.

II.

The court below correctly held that the case for decla
tory judgment, ripe for adjudication when the trial c
ruled (*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U
579, 585), is not moot. The state is actively seeking
enforce against appellants the substantial monetary
feitures which they incurred by continuing the strike a
seizure and the employees are in jeopardy of losing th
valuable seniority rights, as the statute provides in s
cases they shall. In view of the "possible liability"
substantial penalties and the potential loss of senio
to which appellants "might be subjected if the legali
of Missouri's outlawry of the strike after seizure "w
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ality remains a live controversy. *So. Pacific Co.* v. *Inters
Comm. Comm.*, 219 U. S. 433, 452.

This case is entirely distinguishable from *Harris*
Battle, 348 U. S. 803, where the seizure which appella
sued to enjoin did not carry as a consequence illegaliza
of the strike or make its continuation unlawful. In
Harris case the Union did not violate the statute in
way; no potential liability of any kind was incurred dur
seizure and none survived its termination. Moreover,
der the Virginia law, the state appears during seizure
operate the utility *qua* employer on its own account,
the question on the merits is accordingly quite differ
from the issue here.

Apart from potential surviving liabilities and burd
where, as here, it is clear that a state does not by vi
of "seizure" become the "employer", execution of a

tract between the union and the utility company after a strike has been illegalized and its continuation enjoined should not be deemed to render moot the controversy concerning the validity of the prohibition and the constitutionality of the statute which authorized it. Settlement of a labor dispute after the right to strike has been unlawfully denied is not the product of free collective bargaining but of the state's illegal interference with it. Missouri's discontinuance of its illegal restraint after its object has been achieved and its perpetuation thereby rendered unnecessary "does not operate to remove [the] case from the ambit of judicial power." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43.

Finally, the State's threat to apply the King-Thompson Act in future labor disputes constitutes a continuing impairment of federally guaranteed rights and a continuing obstacle to the effectuation of federal policy, which alone suffices to prevent the controversy from being considered moot. Missouri's threat stultifies the collective bargaining process in the very manner which led Congress to reject statutory provisions for seizure on the ground that their mere existence is incompatible with the system of collective bargaining it desired to promote and protect. The threat to seize under the Missouri law enterprises covered by the National Act "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67. While that threat persists the constitutional controversy remains ripe for adjudication.

ARGUMENT.

I.

THE SEIZURE-NO-STRIKE PROVISIONS OF THE MISSOURI LAW CONFLICT WITH FEDERAL LAW.

A. The Amalgamated Decision Is Controlling.

Applied to Laclede and similar enterprises which are subject to the National Act, the Missouri seizure-no-strike scheme offends federal policy in two respects: (1) it denies the right to strike and curtails the exercise of that right and (2) it frustrates free collective bargaining, the system for establishing wages, hours and working conditions which Congress determined should govern in local public utilities, as in all other industries. *Amalgamated Ass'n of Street, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1951), controls this case. The Wisconsin statute at issue in *Amalgamated*, as this Court subsequently observed in *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 474-475, "made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the state statute was invalid in that it denied a right which Congress had guaranteed under §7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and working conditions." In upholding the seizure-no-strike provisions of the King-Thompson Act, which likewise makes it illegal to interrupt a utility service by strike, the Supreme Court of Missouri followed the dissent rather than the holding and the opinion of the majority of the Supreme Court of the United States in *Amalgamated*.

The premises of the *Amalgamated* decision demonstrate that its authority may not be dissipated in the manner

attempted by the court below. Reaffirming *United Auto Workers* v. *O'Brien*, 339 U. S. 454, this Court held that Congress had guaranteed and protected the right of employees to strike in connection with disputes over wages, hours and working conditions; that it had itself imposed upon that right the only "qualifications and regulations" which it deemed desirable, and that Congress had thereby closed the door to concurrent or supplemental regulation of such strikes. 340 U. S. 383, 389-390. The Court held that Congress did not open the door to state regulation where the strike involved "a local public utility." 340 U. S. 383, 391-392. It pointed out that Congress "drew no * * * distinction" between privately owned public utilities and other kinds of business enterprises, and that none "has been drawn in the administration of the Federal Act." 340 U. S., at 392. The Court found that the absence of such distinction was deliberate: "when separate treatment for public utilities was urged upon Congress in 1947, the suggested differentiation was expressly rejected." *Ibid.*

The rejected proposals referred to by the Court, 340 U. S., at 392, note 15, show that they were predicated on the theory that the rates of a public utility are "fixed by some governmental agency" and that strikes in public utilities cause disruption of "essential public service." Indeed, the explanatory statement of Senator Taft, quoted in full at footnote 21 of the opinion, 340 U. S., at 395, shows that Congress believed it necessary to the preservation of a free economy and free collective bargaining to recognize the right to strike for improvement of wages, hours and working conditions in public utilities, exactly as in other basic industries, "in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right." He observed that if the right to strike is modified in the

case of public utilities, "it will be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation."

Finally, the Court in *Amalgamated* rejected the contention that Congress intended "to carve out a separate field of 'emergency' labor disputes;" that it occupied only a portion of that field by adopting "special procedures to deal with strikes which might create national emergencies"; and that it left the balance of that field—strikes which might create "local emergencies"—to the states. The Court held (340 U. S., at 393-394): "congressional imposition of certain restrictions on petitioners' right to strike far from supporting the Wisconsin Act, shows that Congress has closed to state regulation the field of peaceful strikes in industries affecting commerce. * * * And where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in the case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law." The Court pointed out that just as Congress had rejected proposals to limit the right to strike in public utilities, so it had rejected on the merits a proposal that the right to strike be denied in cases of "public emergencies", local or national. 340 U. S., at 394-395, note 20. "This proposal * * * was rejected by Congress as being inconsistent with its policy in respect to enterprises covered by the Federal Act, and not because of any desire to leave the states free to adopt it."

The dissent in *Amalgamated* described the decision as invalidating a "State statute aimed at preventing a breach

down of public-utility service" (340 U. S., at 404), and protested its removal "from the orbit of State regulation [of] matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests" (340 U. S. at 403-404).

The decision below is bottomed on the premise that employees of a public utility owe a duty to remain at work to enable their employer to render service to the public, a duty which employees of other kinds of enterprises do not have, and that whatever "right" public utility employees may have to strike is subordinate to that duty (R. 348-349, 352, 353, 356). That is the very argument which was advanced by the dissent in *Amalgamated*, 340 U. S., at 404-405. It is also the same argument on which the State of Tennessee later predicated denial to employees of common carriers of the right to strike and to engage in concerted activities. *Kerrigan Iron Works, Inc.* v. *Cook Truck Lines, Inc.*, 296 S. W. 2d 379 (Tenn., Ct. App., 1956). This Court rejected the argument in *Amalgamated* and reversed the *Kerrigan* case *per curiam*, *Teamsters Union* v. *Kerrigan Iron Works*, 353 U. S. 968.[9]

9. The court below sought to draw support (R. 350) from the decision of the NLRB in *Marshall Car Wheel and Foundry Co.*, 107 NLRB 314, 315. But the inference that NLRB doctrine supports its conclusion is plainly inconsistent with this Court's holding to the contrary in *Amalgamated*, 340 U. S., at 383, n. 14. The obligation imposed on strikers in the *Marshall* case is "to take reasonable precautions to protect the employer's physical plant from such imminent damage as foreseeably would result from their sudden cessation of work." Assuming, *arguendo*, that public utility strikers have a comparable obligation to take reasonable precautions to protect the Company's property and customers from physical damage, not only at the inception but throughout the strike, the steps which the Unions here took (pp. 6-7 *supra*), certainly satisfied any such obligation. In any event, the court below was powerless to pass upon the question whether the steps taken by the Unions to guard against physical damage were so inadequate as to make the strike an unprotected activity. *San Diego Unions* v. *Garmon*, 359 U. S. 236, 244-246.

Closely related, and equally foreclosed, is the argument (R. 344-345, 350, 351) that since states have plenary power to compel public utilities to render services to the public they must be empowered to bar strikes of public utility employees which prevent the utility from rendering such service. That is the very argument upon which the Supreme Court of Wisconsin predicated its decision in the *Amalgamated* case. 340 U. S., at 388, 397.

There is neither novelty nor merit in the contention, advanced below (R. 353), that the states are empowered to outlaw public utility strikes if the purpose of outlawry is to guard the public against interruption of service rather than to regulate labor relations as between the utility and its employees. As this Court pointed out in *Anheuser-Busch*, p. 18, *supra*, and the dissent in *Amalgamated*, pp. 20-21, *supra*, the purpose of the Wisconsin strike prohibition at issue in *Amalgamated* was also to protect the public against interruption of a gas company's service. That did not authorize the state to forbid the exercise of a right which Congress guaranteed. From *Hill* v. *Florida*, 325 U. S. 538, on, this Court has made it clear that where state regulation impinges upon the exercise of a Section 7 right, the regulation must fall even though the interest which the state seeks to serve thereby has nothing to do with labor relations. *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 479-480; *Local 24, International Brotherhood of Teamsters* v. *Oliver*, 358 U. S. 283, 297.

The fact of the matter is, however, as the opinion below shows, that Missouri's outlawry of public utility strikes is predicated upon the view that the strike weapon is not an appropriate or tolerable adjunct of collective bargaining over wages, hours and working conditions in public utilities[10]—which is the very antithesis of Congress' view.

10. "A strike such as this operates chiefly against the public. The utility loses no business because there is nowhere for the

See pp. 19-20, *supra*. Congress regarded preservation of the right to strike as indispensable to the system of free collective bargaining, and it relied on that system to produce agreement on wages, hours and working conditions in public utilities as in all other industries. The court below overlooked the fact that the field of "labor relations" which is preempted by the National Act is not concerned with substantive terms or conditions of employment (cf. R. 349, 352), but rather with the system of free collective bargaining and with the economic weapons to which the parties may lawfully resort in resolving their disputes over terms and conditions of employment under that system. Cf. *Local 24, International Brotherhood of Teamsters, etc. v. Oliver*, 358 U. S. 283, 295. It overlooked also the Missouri legislature's explicit statement, Section 295.010, p. 8, *supra*, that the State Act constitutes a "regulation of the labor relations affecting * * * public utilities," and its provision (Section 295.180(2)) for termination of seizure as soon as the "labor dispute" which evoked it is resolved. The Missouri legislature recognized, as did Congress, that the use of seizure "in order to prevent work stoppages" is a "technique to solve labor disputes." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 586. Application of Missouri's seizure-no-strike law to utilities subject to the National Act is thus an attempt to override Congress' judgment on the crucial issue of labor relations policy as it affects public utilities and their employees.

On the premises of the *Amalgamated* decision the differences between the Missouri and Wisconsin statutes relied on below (R. 352-353), are immaterial. It is true that Missouri, unlike Wisconsin, does not attempt to substitute

patrons to turn for service. The inevitable result of such a strike is to coerce and intimidate the customers contrary to laws made for their protection." (R. 352).

for collective bargaining compulsory arbitration. But that sharpens rather than mitigates the conflict which results from denial of the right to strike. Congress relied on preservation of the strike weapon to equalize bargaining power and produce voluntary agreement mutually acceptable to both sides. Under compulsory arbitration, the issues in dispute are resolved at least by neutrals, not unilaterally by one of the contestants. Under the Missouri seizure system, outlawry of the strike imposes no pressure on the employer to yield to the employees' demands while it leaves the employees no choice but to work indefinitely on the employer's terms. If Wisconsin's substitute for collective bargaining and voluntary agreement is in conflict with federal policy, *a fortiori*, Missouri's must fall.

Indeed, Congress barred seizure-no-strike schemes just as it barred compulsory arbitration-no-strike schemes. As this Court found in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586, Congress refused to adopt

> the seizure technique to solve labor disputes in order to prevent work stoppages * * *. When the Taft-Hartley Act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency [93 Cong. Rec. 3637-3645]. Apparently it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective bargaining [93 Cong. Rec. 3835-3836].

Congress rejected seizure as a technique for dealing with strike-created "emergencies", as it rejected compulsory arbitration, on the merits and not "because of any desire to leave the states free to adopt it." *Amalgamated* case, 340 U. S. 383, 395, and note 21.

Nor is it material that in Missouri a strike may be outlawed only after it appears that disruption of service is threatened. Disruption of normal operations is an inevita-

ble concomitant of successful strike action. To allow a strike as long as it is ineffective but to prohibit it when it is effective is to make a mockery of the right to strike. The Wisconsin Act, like Missouri's, illegalized only those utility strikes which "would cause an interruption of an essential service." 340 U. S., at 387. And the Missouri Act, like Wisconsin's, carries the imprint of legislative determination that any interruption of a public utility service resulting from strike action is, *ipso facto*, "a threat to the welfare and health of the people." p. 3, *supra*. That a public utility strike may be lawful and remain so under the Missouri scheme until the Governor makes his investigation and issues his seizure proclamation affords no basis for distinction. A state is no more free to impose "conditions on the right to strike" which illegalize its continuance, than it is to delay exercise of the right for thirty days or "abrogate that right altogether." *Amalgamated* case, 340 U. S., 383, 395-396.

The question is not, as the court below would have it (R. 344, 346, 348), whether the situation created by interruption of a public utility service as a result of strike action may properly be found by state authorities to constitute an "emergency," however that term may be defined. The question is rather whether Congress, by preserving the right of employees of local public utilities to strike, by refusing to exempt local public utilities from the industries in which economic strikes are governed exclusively by federal law, and by refusing to sanction seizure in cases of "emergency," precluded the states from attempting to deal with the conditions flowing from a local public utility strike by illegalizing the strike. This Court answered that question in *Amalgamated* when it rejected the contention "that Congress intended, by silence, to leave the states free to regulate 'local emergency' disputes." 340 U. S. 383, 393-394.

In *San Diego Unions* v. *Garmon*, 359 U. S. 236, 243, this Court noted that in preemption cases "judicial concern has necessarily focused on the nature of the activities which the States have sought to regulate, rather than on the method of regulation adopted." *Amalgamated* was cited as an instance in which "the exercise of state power over a particular area of activity threatened interference with the clearly indicated [national] policy of industrial relations • • •." Ibid., and note 1. This Court reiterated that when the activities which a state purports to regulate are protected by Section 7 "due regard for the federal enactment requires that state jurisdiction must yield," regardless of the nature or objectives of the state policy, and "of the mode [of regulation] adopted." 359 U. S., at 244.

The Supreme Court of Missouri has squarely held, *Rider* v. *Julian*, 365 Mo. 313, 282 S. W. 2d 484, 492-496, cf. *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 819, 244 S. W. 2d 75, 84, and the facts of this case make plain (R. 182, 264-266, pp. 8-9, *supra*), that seizure under the King-Thompson Act does not have the effect of transforming a utility's employees into employees of the State of Missouri or making the State their employer. Seizure of the type here involved, "token seizure" as the Governor's agent called it, p. 8, *supra*, does not even arguably alter the preemptive applicability of the National Act. Cf. Title 56, Chapter 17, Code of Virginia, Chapter 696, Acts of Assembly 1952, §§ 56-509–56-528. Accordingly, there is no occasion here to consider the effect of a contention that a state may, without offending the National Act, through exercise of its power of eminent domain, become the actual owner and operator of a utility, and hence an "employer" exempt by virtue of Sections 2(2) and 2(3) of the National

Act from its limitations. Cf., however, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586, and *Local 24, etc.* v. *Oliver*, 358 U. S. 283.

B. The 86th Congress Rejected a Proposal to Overrule Amalgamated and Adopted an Amendment Which Reaffirms Preclusion of State Power to Curtail or Impair the Right of Public Utility Employees to Strike.

In the course of debate in the Senate on S. 1555, the bill which, on September 14, 1959, became law as the Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, Senator Holland, on April 25, 1959, proposed the following amendment (105 Cong. Rec. 6037):

> (d)(1) Nothing in this Act or the Labor-Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulate or qualify the right of employees of a public utility to strike, or which prohibit strikes by such employees.
>
> (2) As used in this subsection the term "public utility" means an employer engaged in the business of furnishing water, light, heat, gas, electric power, or passenger transportation services to the public.

Senator Holland pointed out that the purpose of the amendment was to overrule the *Amalgamated* decision, under which the States "are left without any power at all * * * to keep their public utilities running." *Ibid.* He observed that bills to overrule *Amalgamated* had been introduced at every session of Congress since the decision issued, but that none had been reported out of Committee. 105 Cong. Rec. 6039-6040.[11] He criticized the rationale of

11. In fact, in the 85th Congress Senator Holland's amendment was proposed on the floor and voted down. See 104 Cong. Rec. 9980-9995.

the majority opinion and forcefully urged the Senate to adopt the view of the dissent. 105 Cong. Rec. 6037-6042. He described certain strikes in local public utilities, which, he said, had created local emergencies. 105 Cong. Rec. 6038-6039, 6042-6043.

Senator Kennedy, the chairman of the subcommittee in charge of the bill, spoke in opposition. He said (105 Cong. Rec. 6043):

> • • • This is an extremely complicated subject. Many of the examples cited by the Senator caused great inconvenience to the people of the areas involved, but in my opinion they are not comparable to the difficulties which the Nation would face by reason of a major disruption of service in an industry essential to the economy of the country. Yet Taft-Hartley Act did not provide that there should be any qualification of the right of employees of public utilities to strike, or that there should be compulsory arbitration of disputes in these industries.
>
> If the carriers do not operate in Jacksonville, that is an inconvenience; but every strike involves inconvenience. • • •

The amendment was voted down 64-27. (105 Cong. Rec. 6044.)

As finally enacted, the relevant provisions of the new Act relating to federal-state jurisdiction are as follows:

> Sec. 701. (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:
>
> (c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute

over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

The legislative history of the bill which passed the House from which, save for the proviso to Section 14(c)(1), these provisions were derived, makes it clear that their purpose was to reverse the rule of *Guss* v. *Utah Labor Relations Board*, 353 U. S. 1, thus allowing the states to regulate conduct arising out of labor disputes where the NLRB declines to assert its jurisdiction. H. Conf. Rep. No. 1147, 86th Cong. 1st Sess., pp. 36-37; 105 Cong. Rec. 13091, statement of Congressman Griffin, July 27, 1959. The proviso, on the other hand, which was added at the Senate's insistence, assures that labor disputes in all enterprises over which the Board asserted jurisdiction under its policy standards prevailing on August 1, 1959, remain immune from state control. *Ibid.* Among these are virtually all local public utilities. Under the standards in effect on August 1, 1959, of which Congress took cognizance and which it wrote into law, the Board asserts jurisdiction "over all labor disputes involving local public utilities which exert or tend to exert a pronounced impact on commerce." *Sioux Valley Empire Electric Assn.*, 122 NLRB No. 18; see p. 5, n. 3, *supra*.

It seems plain that the 86th Congress approved and reenacted the rule of the *Amalgamated* case—that states may not curtail the right to strike of employees of local public utilities over which the Board asserts jurisdiction. Congress knew that: "Creation of a special classification for public utilities is for Congress, not for this Court * * *."

Amalgamated case, 340 U. S. 383, 392-393. Its rejection of the Holland amendment is a declaration that no special classification is warranted or desired. *Cf. Amalgamated* case, 340 U. S. 383, 394-395. While Congress amended other aspects of the law involving federal-state relationships it chose to leave untouched the rule that federal preemption applies without qualification to public utilities and "local emergency" situations. *National Labor Relations Board* v. *Gullett Gin Co.*, 340 U. S. 361, 365-366. Indeed, in adopting the Board's standards as the touchstone of exclusive federal jurisdiction Congress explicitly applied the preemption doctrine, *inter alia*, to local public utilities. Cf. the dissent in *Amalgamated*, 340 U. S., at 403-404. Now, less than ever, is creation of "a special classification for public utilities" or "local emergency" disputes a job for this Court.

II.

THE DECLARATORY JUDGMENT CASE IS NOT MOOT.

The Missouri Supreme Court correctly held that the case for declaratory judgment, ripe for adjudication when the trial court ruled (*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 585), was not rendered moot by termination of the strike pursuant to the injunction, subsequent execution of contracts between Laclede and the appellants and consequent relinquishment of the seizure (R. 341-342). As the courts below specifically found (p. 11, *supra*), appellant Locals continued their strike after the seizure began from July 5, through July 13, 1956, in defiance of the Missouri Act's outlawry of such conduct. The Locals and their officers thereby incurred the substantial forfeitures which Missouri is even now seeking to collect (p. 10, *supra*). The employees jeopardized their seniority rights, which remain in doubt. In view of the "possible

liability" for substantial monetary penalties and the potential loss of seniority to which appellants "might be subjected if the legality" of Missouri's outlawry of the strike after seizure "were not determined," it cannot be suggested that the case for determining the constitutionality of the seizure-no-strike provisions is moot. *So. Pacific Co.* v. *Interstate Comm. Comm.*, 219 U. S. 433, 452; *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 325 (C. A. 10); *Textile Workers Union* v. *Lincoln Mills of Ala.*, 353 U. S. 448, 459; *Pollard* v. *United States*, 352 U. S. 354, 357-358; *Amalgamated Ass'n, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 416, 417, note 1; *Burrell* v. *Martin*, 232 F. 2d 33, 37-39, and note 16 (C. A. D. C.).

Harris v. *Battle*, 348 U. S. 803, upon which the suggestion of mootness below was predicated, is wholly inapposite. *Harris* was merely a suit to enjoin a potential seizure; the seizure involved there did not outlaw the strike or make its continuation unlawful. It was held in *Harris* that when the labor dispute was settled and the seizure terminated the injunction case became moot. But in the *Harris* case appellants in no way violated the statute. They incurred no potential liability during seizure and none survived its termination. In Virginia, seizure has characteristics and consequences entirely different from those here involved. Unlike Missouri, it is not illegal in Virginia to continue a strike after seizure; neither the Union nor its officers are required in consequence of seizure to call off a strike. Under the Virginia law the State apparently undertakes to operate the seized utility *qua* employer for its own account. Ch. 17, §§ 56-512; 56-518, 56-520, 56-522. The utility's employees are under no obligation to apply for or accept employment by the State and their seniority rights with the utility are unaffected by their refusal to work during seizure, §§ 56-513–56-514. The only restraint

imposed is that after seizure a union may not picket or otherwise attempt to prevent the State from obtaining employees or operating the utility, § 56-517. The constitutionality of such a law, and seizure under it, poses questions quite different from the questi at issue here.

Quite apart from potential surviving liabilities and burdens, where, as here, seizure by the state is "token" rather than in any sense "real," execution of contracts after employees and their bargaining agents have been prohibited from continuing a strike should not render moot the controversy concerning validity of the prohibition and the constitutionality of the statute which authorized it. Settlement of a labor dispute after the right to strike has been denied is not the product of free collective bargaining: it is the fruit of the State's illegal interference with it. Cf. *Franks Bros. Company* v. *National Labor Relations Board*, 321 U. S. 702, 704-705. After the strike was enjoined, the employees and their bargaining agents had no choice but to settle on the employer's terms or work indefinitely under conditions Laclede imposed. Thus, seizure was "bound to result in many present and future damages of such nature as to be difficult if not incapable of measurement." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 585. Discontinuance of an illegal restraint after its object has been achieved and its perpetuation thereby rendered unnecessary "does not operate to remove a case from the ambit of judicial power." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 308-309. Missouri may not escape review by this Court of the constitutionality of its intrusion into the preempted field by making execution of a contract after token seizure the occasion for lifting its strike ban. Cf. *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 325 (C. A. 10); *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 555-556. To hold otherwise would

allow Missouri to play hide-and-seek with federal supremacy. Cf. *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, 568.

In view of the pervasive threat, acknowledged by the court below (R. 341), to invoke seizure in future disputes, termination of the dispute which provoked this seizure could not moot the controversy. *So. Pac. Terminal Co.* v. *Int. Comm. Comm.*, 219 U. S. 498, 514-516; *So. Pacific Co.* v. *Interstate Comm. Comm.*, 219 U. S. 433, 452; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 448 (C. A. 2). That threat itself impairs the guarantees of the federal Act in all industries which the Missouri Act encompasses. In these industries the employees and their bargaining agents, contrary to the intention of Congress, cannot formulate and press their collective bargaining demands in the expectation that ultimate resolution will depend upon the outcome of a conflict of economic forces. As International Vice President Joseph Applebaum testified (R. 186, 144), the law "is used as a club over the unions' heads—utility workers—in the course of negotiations." Cf. Rogers' threat to invoke "the seizure provisions" if the Locals did not call off their strike (R. 258, p. 7, *supra*). As to these unions and their members, the effectiveness of strike action measures the imminence of seizure, not collective bargaining success.

The collective bargaining process is stultified in the very manner which led Congress to reject provisions for seizure as being incompatible with its policy. As Senator Taft put it, Congress refused to put into the law "an ultimate resort to • • • seizure" because "We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and

it will back out of bargaining." 93 Cong. Rec. 3836, as quoted in *Amalgamated*, 340 U. S. 383, 395. Missouri's holding out of the prospect of seizure, with its accompanying illegalization of strikes, to privately owned utilities which are subject to federal law, invites them to "back out of bargaining" and plainly "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67; *Hill* v. *Florida*, 325 U. S. 538, 542. The prospect that Missouri will seize and enjoin under the King-Thompson Act, as contemplated by its policy declaration, is itself "a potent method of governing conduct and controlling policy." *San Diego Unions* v. *Garmon*, 359 U. S. 236, 247. Missouri's determination to apply the seizure-no-strike provisions in future disputes involving utilities substantially affecting commerce like Laclede is thus a continuing invasion of the preempted field. As this Court put it in *Garmon*, *ibid.*, at p. 246: "Our concern is with delimiting areas of conduct which must be left free from state regulation if national policy is to be left unhampered." Along as Missouri's threat persists, national policy is frustrated and the case for determining constitutionality of the seizure-no-strike scheme remains ripe for adjudication.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Court should hold the seizure-no-strike provisions of the King-Thompson Act unconstitutional and reverse the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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APPENDIX A.

THE KING-THOMPSON ACT, R. S. MO. 1949, CHAPTER 295.

295.010. *Labor relations affecting public utilities—state policy.*—It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest.

295.020. *Definitions.*—1. The term "public utility" shall include any person engaged in the business of producing, distributing, selling or otherwise furnishing electric light or power, heat, gas, steam, water, sewer service, transportation excepting railroads, communication, or any one or more of them to the people of Missouri.

2. The term "person" means any individual, firm, copartnership, corporation, municipal corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

3. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a utility or group of utilities or by its or their employees to act or do for them.

4. The term "collective bargaining" shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions.

5. The term "labor dispute" shall involve any controversy between employer and employees as to hours, wages, and working conditions. The fact that employees have amicable relations with their employers shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes.

6. The term "employee" shall refer to anyone in the service of another, actually engaged in or connected with the operation of any public utility throughout the state.

7. The term "board" shall mean the state board of mediation.

295.030. *Governor to appoint state board of mediation —members—qualifications—terms—vacancy.*—1. Within thirty days after the effective date of this chapter the governor, by and with the advice and consent of the senate, shall appoint five competent persons to serve as a state board of mediation; two of whom shall be employers of labor, or selected from some association representing employers of labor, and two of whom shall be employees holding membership in some bona fide trade or labor union; the fifth shall be some person who is neither an employee nor an employer of labor and who shall be chairman of said state board of mediation.

2. Two members of said board shall be appointed for one year, two for two years, and one for three years, and all appointments thereafter shall be for three years or until their respective successors are appointed in the manner herein provided.

3. If a vacancy occurs in said Board by death or otherwise, at any time, the governor shall appoint some competent person having the same qualifications as his predecessor to fill the unexpired term.

295.040. *Oath of members—main office—meetings.*—Each member of said board shall, before entering upon the duties of his office, take and subscribe an oath to support the Constitution of the United States and this state and to demean himself faithfully in his office. The main office of the state board of mediation shall be in Jefferson City, but the board may hold meetings at any time or any place in the state whenever the same shall become necessary, and three members of the board shall constitute a quorum for the transaction of business.

295.050. *Duties of chairman.*—The chairman of the board shall devote his full time to his duties and shall have charge of the office of the board. He shall keep all records of the proceedings of the board, and shall supervise the work of the employees of the board, and shall have such other powers and duties as may be conferred, or imposed upon him by the board.

295.060. *Compensation and expenses of board members.* The chairman of the board shall receive a salary of five thousand dollars per annum, payable monthly; each of the other members of the state board of mediation shall receive fifteen dollars per day for the time spent in the performance of their duties. All members shall receive traveling and other expenses incurred in the performance of their duties.

295.070. *Powers and duties of board.*—1. The state board of mediation shall have power to employ and fix the compensation of conciliators and other assistants and to delegate to such assistants such powers as may be necessary to carry out its duties under this chapter. The board

shall by regulation prescribe the methods of procedure before it.

2. The board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter under investigation by the board. In cases of refusal to obey a subpoena issued by the board the circuit court of Cole county or of any county where the person refusing to obey such subpoena may be found, on application by the board, shall have power to issue an order requiring such person to appear before the board and to testify and produce evidence ordered touching the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof.

295.080. *Labor disputes—action by board.*—1. Upon receipt of notice of any labor dispute between parties subject to this chapter, the board shall require such parties to keep it advised as to the progress of negotiations therein.

2. Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.

3. It shall be the duty of all parties to a labor dispute to respond to the summons of the board for joint or several conferences with it or with its representatives and to continue in such conference until excused by the board or its representative.

295.090. *Labor agreements — renewal.*—All collective bargaining labor agreements hereafter entered into be-

tween the management of a utility and its employees or any craft or class of employees shall be reduced to writing and continue for a period of not less than one year from the date of the expiration of the previous agreement entered into between the management of the utility and its employees or if there has been no such previous agreement then for a period of not less than one year from the date of the actual execution of the agreement. Such agreement shall be presumed to continue in force and effect from year to year after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and shall also file a copy of such demands with the state board of mediation, at least sixty days before the original termination date of (*sic*) sixty days before the end of any yearly renewal period, or sixty days before any termination date desired thereafter.

295:100 *Changes in labor agreement — notice.*—1. In the case of all existing labor contracts, agreements or understandings which do not provide for at least a sixty-day notice of desired changes and which contracts, agreements or understandings terminate after seventy days following the effective date of this chapter, the parties thereto shall nevertheless inform, in writing, the other party or parties of any specific changes desired to be made in said contract, agreement or understanding and file a copy of such desired changes with the state board of mediation at least sixty days before the date fixed for the termination of said contract, agreement or understanding.

2. In the case of labor contracts, agreements or understandings terminating within seventy days after this chapter shall become effective, the parties thereto shall forthwith, or not later than ten days after the effective date of this chapter, inform the other party, in writing, of the specific changes desired to be made in said con-

tract, agreement or understanding and promptly file a copy of such demands with the state board of mediation.

295.110. *Changes in employment terms in absence of labor contract.*—Whenever, after the effective date of this chapter, a situation exists in any utility whereby employees are rendering services under terms and conditions which were not at the time this chapter becomes effective and which have not heretofore been the subject of the contract, and said employees desire to effectuate a change in the terms of employment or a utility desires to effectuate a change in said terms of employment then and in that event, it shall be the duty of the party desiring such change, not less than sixty days prior to the desired effective date thereof, to inform the other party in writing of the specific changes so desired in the manner in which they are desired, either by written contract or otherwise and to file a copy of such terms with the state board of mediation.

295.120. *Public hearing, panel — members — powers — hearings.*—1. In the event that management of a utility and the representatives for collective bargaining purposes of any craft or group of employees of such utility shall not have reached and executed a final agreement in writing as to all conditions of employment affecting such employees on or before the termination date of any existing contract, agreement or understanding or any renewal thereof, or unless the parties shall have, before said date, agreed to submit any and all disputes between them to arbitration, the management of such utility and the representatives of such employees shall, within five days after such termination date, each designate, in writing, a person as a public hearing panel member and file such designation with the state board of mediation; the two persons so designated shall choose a third disinterested and impartial person and these three shall compose and act as a panel.

2. The panel shall promptly proceed and within fifteen days following their designation hold and complete public hearings on the specific changes so requested, to the contract, agreement or understanding. Said period of fifteen days may be extended by the mutual written consent of the parties. The panel shall give to each party full notice and opportunity to be heard, but the failure of either party to appear before the panel at the time and place fixed by it shall not deprive the panel of jurisdiction to proceed to a hearing and to make report thereon as herein provided.

295.130. *Appearance in person or by counsel—notice of hearing.*—Parties may be heard either in person or by counsel as they may elect, and the panel shall give due notice of all hearings to the employee or employees or their representatives and the public utility or utilities involved in the labor dispute.

295.140. *Selection of party representatives.*—Representatives for the purposes of this chapter shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other. Representatives of employees for the purpose of this chapter need not be persons in the employ of the utility.

295.150 *Report of hearing to governor.*—Within five days after closing such hearings the panel shall file with the governor, in writing, a report setting forth a statement of the controversy, a resumé of the evidence submitted to it and its recommendations based thereon.

295.160 *Appointment of representatives by board when not designated by parties.*—1. In the event either management of the utility involved or the representatives of the employees for collective bargaining purposes shall fail or neglect to designate, as herein provided, such a person to represent it upon the panel or the two so designated shall

fail to agree upon the third member of the panel, within ten days after the date fixed for the termination of such contract, agreement or understanding, or upon failure to file such designations or any of them with the state board of mediation within said ten-day period, the state board of mediation shall appoint such person or persons, selecting in each case a person qualified by previous experience or employment to represent employers, employees or the public as the case may require.

2. Should both management and the representatives of the employees fail or neglect to designate representatives upon said panel within the time herein required, then the state board of mediation shall appoint a panel of three persons, to be selected as follows: one to represent management of the utility, giving the management forty-eight hours to select its preference from a list of five persons submitted by the board to the management before designating such person; one to represent the employees involved, giving their representative forty-eight hours to select their preference from a list of five persons submitted by the board to such representative, before designating such person; and one to act as the impartial third person. Failure on the part of either party to make such selection shall not prevent the board from appointing the members of the panel from the lists submitted.

295.170. *Proceedings not to supersede voluntary arbitration.*—Compulsory arbitration, as provided in this chapter, shall not be effective in disputes where voluntary arbitration is a part of the contract between the disputing parties. In the event that through the voluntary arbitration disputing parties cannot agree, the state board of mediation shall then enforce the compulsory arbitration as provided.

295.180. *Utility strike—power of governor.*—1. Should either the utility or its employees refuse to accept and

abide by the recommendations made pursuant to the provisions of this chapter and as a result thereof the effective operation of a public utility be threatened or interrupted, or should either party in a labor dispute between a utility and its employees, after having given sixty days' notice thereof, or failing to give such notice, engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, or in the event that neither side has given notice to the other of an intention to seek a change in working conditions, and there occurs a lockout, strike or work stoppage which, in the opinion of the governor, threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare, then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the public interest.

2. Such power and authority may be exercised by the governor through such department or agency of the government as he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, and that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility; provided, that whenever such public utility, its plant, equipment or facility has been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage or slowdown, or other cause, such utility, plant, equipment or facility shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute, and it shall thereupon be the duty of such utility to continue

the operation of the plant, facility, or equipment in accordance with its franchise and certificate of public convenience and necessity.

295.190. *Governor to prescribe rules and regulations.*— The governor is authorized to prescribe the necessary rules and regulations to carry out the provisions of this chapter.

295.200. *Unlawful acts—penalties—enforcement of provisions.*—1. It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state.

2. It shall be unlawful for any public utility to employ any person or employee who has violated paragraph 1 of this section except that such person or employee may be employed only as a new employee.

3. Any labor organization or labor union which violates paragraph 1 of this section shall forfeit and pay to the state of Missouri for the use of the public school fund of the state, the sum of ten thousand dollars for each day any work stoppage resulting from any strike which it has called, incited, or supported, continues, to be recovered by civil action in the name of the state and against the labor organization or labor union in its commonly used name.

4. Any officer of any labor organization or labor union representing employees of public utilities who participates in calling, inciting or supporting any strike in violation of paragraph 1 of this section shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of one thousand dollars to be recovered by civil action in the name of the state and against such officer.

5. Any public utility that engages in a lockout which brings about a work stoppage shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of ten thousand dollars for each day of work stoppage caused by such lockout, said amount to be recovered by civil action in the name of the state and against the public utility; provided further, that if, upon any investigation, supported by competent evidence, by the state board of mediation, it shall appear that any public utility has refused to bargain collectively in good faith with its employees over the terms and conditions of employment, said state board of mediation shall certify such record and proceedings to the public service commission, and, upon consideration of the facts in such record and proceedings the public service commission shall find that the evidence justifies such action, it may revoke the certificate of convenience and necessity of such public utility or impose such other conditions upon such public utility as may be provided by law. Any such action by said public service commission shall be subject to review in the courts of this state in the same manner as other orders or decisions of said commission.

6. The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder.

295.210. *Meaning of law.*—No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

APPENDIX B.

THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right

of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or

protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

* * * * *

Section 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

On Appeal from the Supreme Court of Missouri.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

OPINION BELOW.

The opinion of the Supreme Court of Missouri, as amended, is reported at 317 S. W. 2d 309.

JURISDICTION.

Appellants rely upon Title 28, United States Code, Section 1257 (2). This Court (R. 375), having postponed further consideration of the question of jurisdiction to the hearing of the case on the merits (359 U. S. 982), the appellee, in accordance with the rules of this Court, discusses the question of jurisdiction as Point I of this brief.

QUESTION PRESENTED.

The appellants, in their statement of the question presented (Brief, p. 2), omit any reference to the fact that the state, under the act here in question, may "take possession" of a "public utility" only after the Governor, upon investigation, has proclaimed "that the public interest, health and welfare are jeopardized and that the exercise of such authority is necessary to insure the operation of such public utility * * *." The appellants also, in their statement of the question presented, refer to the Fourteenth Amendment to the Constitution of the United States, but nowhere in their brief do they rely upon such constitutional provision. Accordingly, the appellee believes that the question presented to this Court, properly stated, is as follows:

> May a statute of the State of Missouri which provides that, in the event of a threatened or actual strike by employees of a public utility, upon proclamation of the Governor of the State to the effect that the operation of the utility is threatened or interrupted so as to jeopardize the public health, interest and safety, the State may seize the facilities of the utility for use and operation by the State in the public interest, and which makes unlawful strikes by employees of the public utility against either the utility or the State after such seizure, be applied to a public utility operating within the State of Missouri and enforced by injunction against striking by the employees and their unions after seizure of the property of the utility by the Governor, although the National Labor Relations Act is applicable to such utility, its employees and their unions, or is the State Act in conflict with the National Labor Relations Act and national policy so that it may not, under Article VI of the Constitution of the United States, be applied in such circumstances?

STATUTES INVOLVED.

The King-Thompson Act (Chapter 295, R. S. Mo. 1949), as set out in Appendix A of the brief for appellants, pages 37-47, is involved. In addition to the provisions of the National Labor Relations Act (61 Stat. 136, 29 U. S. C., Section 141, et seq.), printed in Appendix B of the brief for appellants, pages 48-50, there is specifically involved 29 U. S. C., Section 141 (b), providing as follows:

> "(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest."

STATEMENT.

The statement of the case in the brief for appellants sets out generally the case presented to this Court. Such statement, however, omits any reference to the circumstances existing with respect to the operation of the Laclede Gas Company in the City of St. Louis and St. Louis County at the time of the seizure of that company by the Governor of Missouri on July 5, 1956. Such circumstances are set forth in the opinion of the Missouri Supreme Court (R. 346-348) as follows:

> "The evidence showed that Laclede had approximately 364,000 customers, including domestic, industrial and commercial users. It was the only utility distributing gas in the area. Residential customers used gas for cooking, water heating, refrigeration and space heating. Practically all of the hospitals in the St. Louis area used gas for sterilization, hot water heating, cooking and space heating. Doctors and dentists in the area were also furnished with gas for their office purposes. Large housing projects were also among the company's customers (R. 33-34).
>
> "During the first ten days of the strike, Laclede received in excess of 13,000 service calls concerned principally with complaints that the gas service had failed or that leaks existed in the streets (R. 39). Records of typical cases involving danger to health and safety were put in evidence by the state (Pl. Ex. 6, R. 108, 381; Pl. Ex. 7, R. 108, 382; Pl. Ex. 8, R. 109, 383; Pl. Ex. 9, R. 116, 384; Pl. Ex. 11-13, R. 142, 385-387). The normal number of complaints concerning failure of gas service for such a period was about 100 (R. 39). There was testimony that 'practically all the areas in our county system' (R. 43) had been denied gas service due apparently to the closing of shut-off valves by unauthorized persons. Areas within the city of St. Louis were without gas largely

due to water being injected into the gas mains (R. 45). Shut-off valves were locked in boxes which could be opened only by a special type of key. Certain employees had these keys prior to the strike and there was no way of telling if all of them had been turned in. Some members of fire departments throughout the city and county also had keys to these boxes (R. 44). Instances were discovered by the police where water was injected into the gas mains. In one case, the hose from a water faucet was still connected and water was running into the gas pipe when the police arrived (R. 123-124). Water in the gas system may shut off a customer's gas temporarily in traveling through the pipes to a low point in the system; and, after it has passed, the gas may come back on and escape through an open outlet, thereby creating a dangerous situation (R. 46). Restoring gas service in any section requires the help of a great number of people. If the valve were merely turned on again, gas might escape through an open outlet and create an explosive or otherwise dangerous situation. It is necessary to shut off the gas at every meter, turn the gas back into the system, then turn on the gas for each customer and light the pilots. During the strike the company did not have sufficient employees to restore service once it had been turned off (R. 45).

"There were also reports of gas escaping into the sewer systems and causing gas fires which had to be extinguished (R. 48-49). At one station, wires carrying electric current used for power were disconnected by the unscrewing and removing of three bolts. In trying to discover the trouble, the man in charge of the plant came in contact with the wires and was severely burned. If the electric connection had not been restored in time, the seal of the gas tank would have been broken and the gas in the

holder would have escaped (R. 98). There was also evidence of tampering with the telemetric controls, which are instruments designed to keep the gas pressure at the proper amount in various sections of the distribution system (R. 125). This created a danger in that gas lines might be ruptured by excessive pressure and flames on burning appliances might be dangerously increased (R. 120). Arrangements were made with city and county police to protect the places where these telemetric controls were located, but the police could not furnish twenty-four-hour protection (R. 121). The company also received numerous reports of escaping gas (R. 109). Since natural gas has practically no odor, it was the practice of Laclede and other companies to add an odorant for safety purposes so that leaks could be detected more readily. This odorant, a liquid, was normally available to some of the employees. During the strike a bottle of this odorant was thrown through a window of the Forest Park office of the company (R. 41), and other quantities of it were deposited at various places in the service area to give the impression that there were leaks where none existed (R. 50).

"When the strike began, the unions advertised in the newspapers that they were setting up crews to take care of emergency work and listed telephone numbers for the public to call (R. 222-223). The defendants' evidence was that these crews responded to approximately 150 calls (R. 223).

"While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders."

SUMMARY OF ARGUMENT.

I.

This cause is moot. Conclusion of the strike against Laclede and termination of seizure by the state made the issues involved in the injunction suit moot. The possible recurrence of state seizure in other disputes does not keep this cause alive. There has been no effort to deprive Laclede employees of seniority rights and, therefore, determination of this cause is not called for by that reason. The effect of a determination of this cause upon pending penalty suits does not afford reason to pass upon the constitutional issues presented in this case. Constitutional issues should be determined only of the strictest necessity and the fact that the issues may be determined in the pending actions directly involving them eliminates such necessity here. The argument that existence of the Missouri statute frustrates national policy and, therefore, the Court should determine the cause is identical with the argument advanced in **Harris v. Battle,** 348 U. S. 803, under similar circumstances involving a Virginia statute. The argument was rejected there and should likewise be rejected here. The authorities relied upon by the appellants are not applicable.

II.

The decision of this Court in **Amalgamated Association v. Wisconsin Board,** 340 U. S. 383, does not control this case. The Wisconsin statute is entirely different from the Missouri statute here involved. The Wisconsin statute prohibited altogether strikes by employees of public utilities, whereas, the Missouri statute prohibits strikes only after seizure of a public utility by the governor to avoid jeopardy to the public interest, health and safety. The Missouri statute is not a comprehensive code for the settle-

ment of labor disputes in public utilities, which the Court found the Wisconsin statute to be. The Missouri statute does not embody compulsory arbitration. The proposal for public utilities rejected by Congress and referred to in **Amalgamated** was a denial of the right to strike, together with the substitution of compulsory arbitration for collective bargaining. Such also was the pattern of the scheme referred to by Senator Taft in his remarks and relied upon by the Court in the **Amalgamated** case. The Missouri statute is not in such pattern. The Court found the Wisconsin statute not to be applicable solely to emergency situations, whereas, the Missouri act is.

III.

Chapter 295, R. S. Mo. 1949, is an exercise by the State of Missouri of its historic role of protecting the public interest in the operation of local public utilities. Missouri has regulated public utilities, including gas companies, since 1913. The scheme of regulation has included a requirement that the utility and its employees furnish safe and adequate service to patrons of the utility under penalty of forfeiture, criminal punishment and injunction. Chapter 295 is merely an extension under the police powers of the State of Missouri of that idea to meet modern conditions. As a police regulation in an area of historically local state concern, congressional intention to supersede the state statute must be clearly manifested, particularly where the legislation is, as Chapter 295, is for the protection of the public health and safety.

IV.

The states have not been completely ousted from legislating in the field of labor relations in industries subject to national acts. The states may still legislate when the state legislation does not conflict with the national act,

and this is particularly true where the area of state activity relates to matters of dominant local interest. Chapter 295 does relate to such matters.

V.

The Missouri statute is not in conflict with the national acts. The protection of right to strike under the federal act extends only to "peaceful strikes". Strikes illegal under either state or federal law are not peaceful strikes and are, therefore, not protected activity under federal law. A strike in violation of Missouri law designed to protect the public health and safety is unlawful, not peaceful and unprotected under federal law. The Labor Management Act of 1947 recognizes that parties to a labor dispute have no right to engage in practices which jeopardize the public health, safety or interest, and the Missouri statute is designed for the protection of public health, safety and interest. Any impairment by the Missouri statute of the collective bargaining process protected under federal law arises solely by reason of limitation upon right to strike, but if such limitation affects only unlawful, non-peaceful strikes, the fact that it, to that extent, deprives employees and their unions of such weapon in the collective bargaining process does not render the Missouri statute in conflict with federal law.

VI.

The rejection by the 86th Congress of the Holland Amendment and the previous rejection of similar proposals is of no significance in the determination of the validity of the Missouri statute. Debate upon the Holland Amendment was quite limited, with only one Senator speaking in opposition to it. His remarks show that opposition was not necessarily on the merits of the proposition but, as in the case of previous similar proposals, was

caused by a procedural question involved in the inclusion of the amendment in the bill under consideration. Furthermore, Senator Kennedy, in his argument against the Holland Amendment in the 86th Congress and previously in discussion of similar proposals, argued against the proposal for the reason that state courts have authority to act in cases where the health, safety and basic welfare of the citizens of the state are at stake. This is, in effect, a recognition of the validity of Chapter 295 as a legislative expression of such policy.

ARGUMENT.

I.

This Cause Is Moot.

This cause of action originated on July 9, 1956 (R. 5-19, 340), as a suit to enjoin the continuation of a strike, begun July 1, 1956 (R. 23-24, 34), by members of the appellant unions against the Laclede Gas Company, after the Governor of Missouri had, on July 5, 1956 (R. 17-18), taken possession of the facilities of Laclede for use and operation by the State of Missouri. The appellants' answer in the cause asserted, on numerous grounds, the unconstitutionality of Chapter 295, R. S. Mo., under which the Governor had acted (R. 19-30, 271). They also sought a declaratory judgment that Chapter 295 was unconstitutional for the reasons set out in their answer (R. 271-272).

On July 13, 1956, after a trial, the circuit court enjoined the appellants from continuing to strike against Laclede and the State of Missouri (R. 277).[1]

The employees returned to work July 14, 1956. On August 10, 1956, new labor agreements were signed between Laclede and the appellant unions. The Governor of Missouri terminated the seizure of Laclede October 31, 1956 (R. 341).

The Supreme Court of Missouri, upon appeal of the cause, rejected the suggestion that the settlement of the labor dispute and the termination of the seizure by the

[1] By amended decree, on August 17, 1956, the court, in response to appellants' petition for a declaratory judgment, adjudged Chapter 295 constitutional and valid and further adjudged that striking by appellant unions and their members was unlawful so long as the Governor's proclamation and executive orders of July 5, 1956, remained in effect (R. 294-295).

State of Missouri made the cause moot (R. 341-342). The court declined, however, to consider matters pertaining to the validity of Chapter 295 other than those directly involved in the injunction (R. 344).

Regardless of the conclusion of the Missouri Supreme Court (**Amalgamated Association v. Wisconsin Board**, 340 U. S. 416, 418), appellee submits that, under the decisions of this court, this cause does not now involve a case or controversy within its jurisdiction. The conclusion of the strike and termination of the seizure by the State rendered moot the issues directly involved in the injunction proceeding. **Harris v. Battle**, 348 U. S. 803; **Montgomery Ward and Co., Inc., v. United States**, 326 U. S. 690; **Commercial Cable Company v. Burleson**, 250 U. S. 360. The possibility of recurrence of the allegedly illegal seizure would not prevent the cause from becoming moot. **Commercial Cable Company v. Burleson**, supra.

The alleged threat to the seniority rights of Laclede employees is more imaginary than real. To the present time, more than three years after the strike, no action has been taken to deprive the employees of seniority rights. The mere possibility of penalty or liability does not keep a cause alive when there is no action actually taken or threatened to impose the penalty or liability. **Lewis Publishing Company v. Wyman**, 228 U. S. 610. Furthermore, Section 295.200 (2), which relates to seniority, makes unlawful the action of the utility which re-employs the employees. Laclede, having done so, alone would suffer the consequences of such unlawful act for which incidentally, no punishment is provided.

As for the effect of a determination of this cause upon the pending actions for monetary penalties, all questions pertaining to the validity of the act may be determined in those actions. This court does not determine constitutional questions "in advance of the strictest necessity."

Parker v. Los Angeles, 338 U. S. 327, 333; **Williams v. Simon,** 355 U. S. 49, 57-58. Determination of the constitutionality of the penal provisions of the law is not now a matter of "strictest necessity", particularly since the issue, and others not here presented, is directly involved in the proceedings presently pending in the state courts. Furthermore, although the Missouri Supreme Court took note of the pending penalty actions and based their determination that the case was not moot partially upon such fact, the Missouri court expressly declined to pass upon the appellants' objections to the penalty provisions (R. 356).

The appellants' complaint that the mere existence of the Missouri law frustrates the national policy for determination of labor management problems is the identical argument advanced in the **Battle** case, 348 U. S. 803, where the court found the cause moot. See page 23, Brief for the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, amicus curiae, in this cause. Such contention is entitled to no greater weight than it received in the **Battle** case.

The decisions of this court cited to support appellants' position that the case is not moot are inapplicable. **Southern Pacific Co. v. Interstate Commerce Commission,** 219 U. S. 433, and **Southern Pacific Terminal Co. v. Interstate Commerce Commission,** 219 U. S. 498, involved short term orders of the Interstate Commerce Commission. Actions involving such orders subsequent to their expiration date have been held not to be moot because the order may affect future rates. Other cases relied upon involve judgments or administrative orders having continuing direct effect upon the rights of parties concerned, such as **Pollard v. United States,** 352 U. S. 354, where the effect of a criminal conviction continued although the sentence imposed had been served. In **Textile Workers Union v. Lincoln Mills,** 353 U. S. 448, the right to previously accrued wage adjustments re-

mained to be determined despite dissolution of the corporate employer. The order in **United States v. Rock Royal Co-op.**, 307 U. S. 533, likewise would have remained enforceable and affect transactions previously concluded.

The reference to **Amalgamated Association v. Wisconsin Board**, 340 U. S. 416, 417, Note 1, is without significance in the present case. The note referred to dealt with the contention that two other causes involving similar issues were moot (**Amalgamated Association v. Wisconsin Board**, 340 U. S. 383). These contentions were answered by the court's pointing out that one case involved a perpetual injunction, not the situation here, and that the other involved the imposition of a fine in contempt proceedings for enforcement of the injunction. Penalties involved in the cases now pending in the state courts are not sought for violation of the injunction but are those imposed by Section 295.200, R. S. Mo.

Youngstown Sheet and Tube Co. v. Sawyer, 343 U. S. 579, is inapposite. The question presented there was whether or not the constitutional issue was ripe for decision, not mootness.

Walling v. Helmerich & Payne, Inc., 323 U. S. 37, and **United States v. Trans-Missouri Freight Association**, 166 U. S. 290, involved voluntary cessation of agreements and practices which governmental authority sought to forbid. Should the court have refused to consider the causes thereafter, the parties proceeded against might have been at liberty to resume the allegedly illegal practices or agreements. The court therefore proceeded to their determination. Here, seizure was terminated by the State of Missouri because the circumstances which gave rise to such seizure, and which were beyond the control of the State of Missouri, ceased to exist. There has been no cessation merely for the purpose of avoiding ultimate judicial determination of the validity of the action.

II.

The Amalgamated Decision Does Not Control This Case.

The Wisconsin Act involved in **Amalgamated Association v. Wisconsin Board**, 340 U. S. 383, bore some superficial similarity to the Missouri Act here involved. However, the two acts are essentially and fundamentally far different. The decision in **Amalgamated**, properly confined to the actual issues there before the court, does not control this case.

There are a number of features of the Wisconsin Act (Wisconsin Statutes, 1949, Sections 111.50-111.63), not present in the Missouri law, which this Court considered particularly objectionable in **Amalgamated**. The Wisconsin statute (Section 111.62), prohibited all strikes by employees of public utilities. This Court took particular note of this prohibition in declaring that Wisconsin sought "to deny entirely a federally guaranteed right" (340 U. S. 394) and that Wisconsin sought "to abrogate that right altogether" (340 U. S. 395-396).

The Missouri statute, on the other hand, makes striking unlawful (Section 295.200, R. S. Mo.), only after the governor has determined that the public health, interest and safety are jeopardized and has seized the property of the utility "for use and operation by the State of Missouri in the public interest" (Section 295.180, R. S. Mo.). The Missouri Supreme Court recognized that until such time the Missouri law does not make striking by public utility employees unlawful (R. 353). Such has been the construction of the Act in its administration. Since the enactment of the King-Thompson Law there have been seven instances of strikes in public utilities in Missouri in which the governor has determined that the public interest, health and safety were threatened and has exercised the power con-

ferred by Section 295.180 to seize the property of the utility involved.[2] There have, however, been sixteen other instances in which strikes have occurred in public utilities in Missouri and in which the governor has made no finding of threat to the public interest, health and safety.[3] In such the state has taken no action to impose penalties upon the unions or employees involved on the theory that the King-Thompson Act was violated by their strike. On the contrary, there having been no proclamation of the governor, the strike was legal under the King-Thompson Act.

In view of the emphasis placed in the **Amalgamated** case by this Court upon the fact that the Wisconsin Act prohibited strikes altogether, the appellee submits that the fact that the Missouri law makes strikes unlawful only in the event of threat to the public health, interest and safety is highly significant.

In **Amalgamated** the Wisconsin statute was described by the court as "a comprehensive code for the settlement of labor disputes between public utility employers and employees" (340 U. S. 393), primarily because it substituted "arbitration upon order of the board for collective bargaining whenever an impasse is reached in the bargaining process" (340 U. S. 388). The Wisconsin statute made the findings of the arbitrators binding upon parties to a labor dispute subject only to the right of judicial review (Section 111.59, Section 111.60).

The Missouri statute is definitely not a "comprehensive code for the settlement of labor disputes". It does not embody compulsory arbitration. **State ex rel. State Board of Mediation v. Pigg**, 362 Mo. 798, 244 S. W. 2d 75, 81.

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[2] Twelve Years Under the King-Thompson Act (published by the Missouri State Board of Mediation, January, 1959), p. 21. See Appendix A to this brief.

[3] Idem., pp. 24-27. See Appendix B to this brief.

The court, in **Amalgamated**, pointed out that the proposal rejected by Congress for public utilities was a denial of the right to strike, together with the substitution of compulsory arbitration in public emergencies, local or national. The court pointed out that such rejected scheme was the "pattern of the Wisconsin Act" (340 U. S. 394-395). Such is, furthermore, the pattern of the scheme described in the remarks of Senator Taft and quoted by the court in **Amalgamated** (340 U. S. 395, Footnote 21), as among the schemes which the committee had rejected. According to the statement of Senator Taft, such plan was rejected because it involved "a process of the government fixing wages" and because, if such process were available, whichever party might feel that it would receive better treatment as a result would not "make a bona fide attempt to settle if it thinks it will receive a better deal under the final arbitration which may be provided". His remarks show quite clearly that the proposal which the Senator was describing as having been rejected by the committee was likewise in the "pattern of the Wisconsin Act".

Subsequent to the decision in the Amalgamated case, Senator Taft indicated that the implications drawn by this Court from his remarks were not in accord with his understanding of Congressional intention. See Report of Hearings before Senate Committee on Labor and Public Welfare on Proposed Revisions of the Labor Management Relations Act of 1947, 83rd Congress, First Session, 1953, Part I, page 284, where Senator Taft stated: "I may say that we never intended any pre-emption of the field. The Supreme Court has gone beyond what we intended." See, also, remarks of Senator Holland in support of his proposed amendment to S3974, 85th Congress, Second Session, 104 Congressional Record 11091, and in support of proposed amendment to Public Law 86-257, 86th Congress, First Session, 105 Congressional Record 6040. Any further

extension of the remarks of Senator Taft would certainly not be justified.

The Missouri statute, not involving compulsory arbitration, is not of the pattern of schemes rejected by Congress. There is nothing to be gathered from the legislative history of the Federal enactments and proposals to show that Congress intended to exclude state action in accordance with the plan embodied in the Missouri statute.

The Court also found in **Amalgamated** actual conflict between the Wisconsin Act and the National Act in two respects relating to collective bargaining. The Wisconsin Act required collective bargaining only until an impasse was reached (Wisconsin Statutes, 1949, §111.52). The federal act required continued collective bargaining even after a strike. 340 U. S. 388, 399. The Missouri statute does not attempt to terminate collective bargaining at any stage of a labor dispute. Under the Missouri Act, even after a strike or seizure, collective bargaining remains the process whereby the dispute must be settled.

The Court, in **Amalgamated**, pointed out that the employer could, under the Wisconsin Act (Wisconsin Statutes, 1949, § 111.58), refuse, in the arbitration procedure, to consider certain union demands which were properly subjects of collective bargaining under federal law. 340 U. S. 399. The Missouri Act in no manner limits the subjects of collective bargaining between the parties to a labor dispute. Thus, these two examples of express conflict between the Wisconsin Act and the federal acts, which the Court found objectionable in **Amalgamated**, can not be found under the Missouri statute.

Perhaps the most significant distinction between the Wisconsin statute and the Missouri Act is that the Wisconsin statute was not exclusively an emergency measure, whereas, the Missouri Act is. Concededly the court in **Amalgamated** used language which might be taken to

exclude the states from acting as a result of strikes in public utilities even in emergency situations. However, the question actually decided in that case was that a state law, not limited to local emergencies, could not absolutely prohibit strikes in public utilities subject to the Federal acts, and substitute compulsory arbitration for collective bargaining. The court clearly found the Wisconsin statute not to be "emergency legislation" (340 U. S. 393). Since such was the nature of the statute before it, any declarations in **Amalgamated** which purport to invalidate actual emergency state legislation are purely dictum. See Comment, 49 Mich. Law Rev. 1077, 1079 (1951); also Annotation, 22 A. L. R. 2d 894, 896.

The Missouri statute is, of course, actual emergency legislation insofar as limitation upon strikes is concerned. The Missouri Supreme Court characterized the Act as "strictly emergency legislation", * * * "justified under the police powers". "The purpose of the act is to protect * * * citizens against disaster" (R. 353). The emergency characteristics of the seizure provisions of the Missouri Act are illustrated by the actual operation of the Act. As above pointed out, the provisions of the Missouri Act have been invoked on seven occasions.[4] On the other hand, there have been sixteen strikes[5] in public utilities in which there has been no seizure or attempt to invoke the penal provisions of the Missouri Act because the situation did not call for emergency action.

The right and obligation of a state to protect the health and safety of its citizens in emergency situations have repeatedly been recognized. Among situations where emergency state action has been upheld are the so-called "clear and present danger" cases where it has been recognized

[4] Footnote 2, supra. See Appendix A to this brief.

[5] Footnote 3, supra. See Appendix B to this brief.

that state action may be permitted in such circumstances although the restriction involved might otherwise infringe upon constitutionally protected rights. **Feiner v. New York,** 340 U. S. 315, 320; **Cantwell v. Connecticut,** 310 U. S. 296, 308.

Emergency state legislation has been upheld although in the absence of emergency the legislation might well have infringed federal constitutional provisions, such as the contract clause. **Home Building and Loan Assn. v. Blaisdell,** 290 U. S. 398; **Levy Leasing Co. v. Siegel,** 285 U. S. 242; **Veix v. Sixth Ward Savings and Loan Assn.,** 310 U. S. 32.

Certainly the state's authority should not be thwarted and fulfillment of its obligation to protect its citizens in emergency situations must not be precluded because the threat to the citizens arises in a labor dispute. The so-called "right" to strike has never been equated to any constitutional guaranty. **Dorchy v. Kansas,** 272 U. S. 306, 311. The appellant's position, if sustained, would elevate such activity above constitutionally protected rights. Furthermore, the very act of Congress, which is relied upon as the basis of the "right" here claimed, shows that it is subject to limitations. Labor Management Relations Act, 1947, § 13, 29 U. S. C. § 163; **International Union v. Wisconsin Board,** 336 U. S. 257, 260. One limitation must be that in situations of imminent danger to the health and safety of a large portion of the population, the public interest must prevail. **Stapleton v. Mitchell,** 60 Fed. Supp. 51, 61.

As emergency legislation, the Missouri statute stands on a far different footing from the Wisconsin statute involved in the Amalgamated case. That fact, together with the other substantial differences between the Missouri statute and the Wisconsin act, removes the Missouri law from the scope of the **Amalgamated** decision.

III.

Chapter 295, R. S. Mo. 1949, Is an Exercise by the State of Missouri of Its Police Power in Accordance With Its Historic Policy of Protection of the Public Interest in Operation of Public Utilities.

Regulation of the operation of public utilities in Missouri stems from the Public Service Commission Act adopted in 1913 (Laws of Missouri 1913, pages 556-651, now Chapters 386-393, R. S. Mo. 1949). Section 68 of the original Act (Laws of Missouri 1913, page 602, now Section 393.130, R. S. Mo. 1949) required gas corporations to "furnish and provide such services, instrumentalities and facilities as shall be safe and adequate * * *." The obligation so imposed was upon both the utility and its employees. Section 116 of the original Act (Laws of Missouri 1913, page 645, now Section 386.310, R. S. Mo. 1949) authorized the Public Service Commission to require a public utility to maintain and operate its plant in such manner as to promote and safeguard the health and safety of the public. Section 83, Laws of Missouri 1913, page 619 (now Section 386.570, R. S. Mo. 1949), required the employees of gas corporations to obey orders of the Commission under penalty of monetary forfeiture. Failure on the part of employees to obey an order of the Public Service Commission was also made punishable as a misdemeanor (Section 131, Laws of Missouri 1913, page 649, now Section 386.580, R. S. Mo. 1949). The Commission was specifically empowered to cause its general counsel to obtain enforcement of its orders against gas companies and other public utilities by injunction or mandamus (Section 84, Laws of Missouri 1913, page 619, now Section 386.360, R. S. Mo. 1949).

The authority of a state over public utilities includes the authority to require the utility to furnish service to the

public. **New York and Queens Gas Company v. McCall**, 245 U. S. 345. Under the Missouri scheme of public utility regulation, the Public Service Commission would have had, prior to the enactment of Chapter 295, authority to require a public utility to furnish service and to enforce the order by way of injunction against employees who prevented its fulfillment. Thus, the concept that employees of the utility as well as the utility itself owe to the public the duty to furnish services, as embodied in Chapter 295, is nothing new. See 35 Am Jur., Master and Servant, Section 82, page 514. Enforcement of such obligation on the part of the employees by forfeitures, criminal prosecution and injunction has long been a part of the regulatory scheme of the State of Missouri. With the growth in public utility service subsequent to the original enactment of the Public Service Commission Law, the ever broadening reliance by the public upon such service, and the far more frequent threats to continued service of utilities by reason of labor disputes, the somewhat cumbersome procedure under the Public Service Commission Act was deemed inadequate to meet emergency situations which interruption of utility service might produce. The State of Missouri, as the repository of ultimate responsibility for the protection of the health and welfare of its citizens (**House v. Mayes**, 219 U. S. 270, 282), saw fit to draw upon the scheme of Chapter 295 for their protection.

The legislative background of the act here under consideration is significant, not to show that, because this legislation relates to public utilities, it is entitled to special consideration from the standpoint of its validity under the present attack, but to demonstrate that the primary basis of the statute involved and predecessor statutory provisions, was genuinely the protection of the public interest, not state intervention in labor-management relations on behalf of one of the parties to a labor dispute. The history shows clearly that the statute "was addressed to a legiti-

mate end, that is, the legislation was not for the mere advantage of particular individuals but for the protection of a basic interest of society." Home Building and Loan Assn. v. Blaisdell, 290 U. S. 445.

The protection of the important public interest in the operation of public utilities has been historically a matter primarily of state concern. State legislation in such area is generally referable to the police power. **Atlantic Coast Line v. North Carolina Corporation Commission,** 206 U. S. 1. The Missouri Supreme Court properly found Chapter 295 to be a police power measure (R. 363).

This Court has repeatedly held that state legislation enacted in the exercise of the police power should not be held to be abrogated by congressional enactment in the absence of clearly manifest congressional intention to supersede the state legislation. **MK&T Railway Company v. Haber,** 169 U. S. 613, 623; **Reid v. Colorado,** 187 U. S. 137, 148; **Crossman v. Lurman,** 192 U. S. 189, 199-200; **Savage v. Jones,** 225 U. S. 501, 533; **Atlantic Coast Line v. Georgia,** 234 U. S. 280, 294; **MK&T Railway Company v. Harris,** 234 U. S. 412, 418-419; **Carey v. South Dakota,** 250 U. S. 118, 122; **Mintz v. Baldwin,** 289 U. S. 356, 360; **Kelly v. Washington,** 302 U. S. 1, 10; **H. P. Welch Company v. New Hampshire,** 306 U. S. 79, 85; **Maurer v. Hamilton,** 309 U. S. 598, 614; **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749; **Southern Pacific Company v. Arizona,** 325 U. S. 761, 766; **International Union v. Wisconsin Board,** 336 U. S. 245, 253; **Schwartz v. Texas,** 344 U. S. 199, 202-203.

In **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749, the court pointed out that it "will not lightly infer that Congress, by the mere passage of a Federal act, has impaired the traditional sovereignty of the several states * * *" in exercising their "historical powers over such traditionally local matters as public safety and order and the use of the streets and highways".

Chapter 295 is designed to promote public safety and order in the State of Missouri. As above pointed out, it is within the area of regulation which is historically a matter of local state concern. The Congress recognized such local interest in the National Gas Act [52 Stat. 821, 15 U. S. C., Section 717 (b)], by expressly exempting from its operation "local distribution of natural gas or the facilities used for such distribution".

The ultimate object of Chapter 295 is the protection of the health and welfare of the citizens of Missouri. This Court pointed out in **Kelly v. Washington,** 302 U. S. 1, 13, that application of the principle of nonexclusion of state authority "is strongly fortified when the state exercises its power to protect the lives and safety of its people".

In **United Automobile Workers v. Wisconsin Board and Kohler Co.,** 351 U. S. 266, 274, this Court observed: "The states are the natural guardians of the public against violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect".

The State of Missouri is the natural guardian of the health and safety of its citizens. To deny the State of Missouri the right to exercise its traditional authority in the fulfillment of its obligation to protect its citizens in emergencies would deny the State of Missouri its fundamental sovereign authority.

IV.

The Fact That the Missouri Statute Involves Labor Relations Does Not, by Reason of That Fact, Render It Inoperative.

In numerous recent cases this Court has upheld state jurisdiction for the protection of the public safety and wel-

fare in essentially local situations, although the activity sought to be prohibited or punished arose out of a labor dispute in industry subject to Federal labor statutes. **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740; **International Union v. Wisconsin Board,** 336 U. S. 245; **United Automobile Workers v. Wisconsin Board and Kohler Co.,** 351 U. S. 266. See also **Algoma Plywood and Veneer Co. v. Wisconsin Board,** 336 U. S. 301; **United Construction Workers v. Laburnum Construction Corp.,** 347 U. S. 656; **United Automobile Workers v. Russell,** 356 U. S. 634; **Machinists Association v. Gonzales,** 356 U. S. 617; **Youngdahl v. Rainfair, Inc.,** 355 U. S. 131.

Even in cases in which this Court has found state authority to have been superseded by Federal legislation, the Court has carefully pointed out that state authority in the area of labor relations in industries involved in commerce has not been wholly abrogated. **Garner v. Teamsters Union,** 346 U. S. 485, 488; **Weber et al. v. Anheuser-Busch, Inc.,** 348 U. S. 468, 480; **Amalgamated Clothing Workers v. Richman Brothers,** 348 U. S. 511, 519; **San Diego Building Trades v. Garmon,** 359 U. S. 236, ... In the latter case the court observed:

> "* * * However, due regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act. See **International Assn. of Machinists v. Gonzales,** 356 U. S. 617. Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act."

Chapter 295 obviously relates to interests "deeply rooted in local feeling and responsibility". Is there "compelling congressional direction" which ousts the state from its power to act with respect to such interests? There is no express direction to such effect to be found in any congressional act and it must, therefore, be found, if at all, in conflict between the Missouri act and the Federal act or Federal policy as established by congressional act.

V.

There Is No Conflict Between Sections 295.180 and 295.200, R. S. Mo., and the National Labor Acts.

In their brief in this Court, the appellants point to two claimed conflicts between the Missouri statute as applied to Laclede and Federal policy. They contend that it denies the right to strike and curtails the exercise of that right guaranteed under Federal law and that it frustrates the national policy of free collective bargaining.

Throughout this litigation the appellants, in advancing their objection to the Missouri statute on the grounds that it curtails the right to strike guaranteed them under Federal law, have overlooked or attempted to avoid two fundamental facts. The first is that the so-called "right to strike" under Federal law has never been extended to other than peaceful strikes. The second is that the strike against Laclede involved in this litigation, and similar strikes to which the Missouri act applies, was not, in either the legal or popular sense of the term, a peaceful strike.

In the **Amalgamated** case the court, in numerous instances, specifically limited the scope of its decision to "peaceful strikes". 340 U. S. 389, 390, 394, 398. The essence of the Court's holding in **Amalgamated** is to be found in the last reference where the court stated: "It

would be sufficient to state that the Wisconsin act in forbidding peaceful strikes for higher wages in industries covered by the Federal act has forbidden the exercise of rights protected by Section 7 of the Federal act." That not all strikes but only "peaceful strikes" are protected activities under the Federal act is clear from the decisions of this Court. The decisions also make clear that the term "peaceful" is employed in this connection as synonymous with the term "lawful". Thus a strike in violation of Federal mutiny laws is not a protected activity. **Southern Steamship Co. v. National Labor Relations Board,** 316 U. S. 31. A sit-down strike, illegal under state law, is not a Federally protected activity. **National Labor Relations Board v. Fansteel Metal Corp.,** 306 U. S. 240, 252. Intermittent work stoppages, prohibited under state law, likewise were not protected activity under Section 7 of the Federal Act. **International Union v. Wisconsin Board,** 336 U. S. 245, 258-265. Mass picketing and violence arising out of a strike are not Federally protected activities and are subject to state interdiction. **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 748-749. **United Automobile Workers v. Wisconsin Board,** 351 U. S. 266, 274-275.

The denial of Federal protection of such activities is dictated by the policy of the national act. Section 1 (b) of the Labor Management Relations Act, 1947, 29 U. S. C., Section 141 (b), declares that employers, employees and labor organizations must "above all, recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest." As the Missouri Supreme Court pointed out, "under law" as here used must have been intended to include state law as well as Federal law "because historically and traditionally the state governments have been vested with the protection of the public health, safety and interest under their general police power" (R. 350). **House v. Mayes,** 219 U. S. 270,

282. Such conclusion on the part of the Missouri Court is amply justified by the cases above cited, for this Court, in determining the unlawful nature of the activity involved, looked to either Federal or state law as the case required. Such conclusion, furthermore, is particularly called for, when the state law is, as the Missouri statute is, legislation for the protection of the public in emergency situations. As pointed out in Point I, supra, emergency situations, although not creating new state power, certainly permits the application of state imposed limitations in circumstances where such might not be otherwise permitted.

Inasmuch as the Federal law demands the parties to labor disputes must recognize that under law neither party has any right to engage in acts or practices which jeopardize the public health, safety or interest it must follow that acts or practices having such effect are unlawful, nonpeaceful and beyond the protection of Federal law. Section 295.180, R. S. Mo. 1949, providing for the seizure of public utilities may be employed only when the chief executive of the State of Missouri has made a determination that the "public interest, health and welfare are jeopardized" and issued his proclamation to that effect. Upon such determination being made, the activity involved no longer is protected under Federal law.

Appellee does not, of course, argue that any violation of state law makes a strike nonpeaceful and unprotected under federal law. Certainly, if the state law is in conflict with an express provision of a federal statute within the domain of federal authority, violation of the state law cannot render the strike unlawful. **United Auto Workers v. O'Brien**, 339 U. S. 454, 458. Where, however, there is no express conflict and the applicable state law is in pursuance of the state's dominant local concern in the protection of the health and safety of its citizens and of their

property in a situation of actual or imminent danger or application of state law is necessary to preserve order, the state statute must remain effective and deprives the activity of lawful and peaceful character, even though it involves a labor dispute. **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749; **United Automobile Workers v. Wisconsin Board,** 351 U. S. 266, 274.

The states have not delegated to the federal government the obligation to protect their citizens in local emergency situations. The states retain this obligation and their exercise of authority to fulfill it is a fundamental reason for their existence. "The power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents cannot be doubted." **Thornhill v. Alabama,** 310 U. S. 88, 105.

The strike which gave rise to this litigation was not only unlawful and non-peaceful under Chapter 295, R. S. Mo., but it was also unlawful because, as pointed out by the Missouri Supreme Court (R. 346), the statutory requirement that the patrons of Laclede be furnished with "safe and adequate" service, was clearly violated. Section 393.130, R. S. Mo. 1949. Furthermore, the circumstances surrounding the governor's exercise of the authority conferred by Section 295.180, R. S. Mo., which appellants have sought to ignore in their statement of the case, show clearly that in any sense of the term the situation arising as a result of the strike was anything but "peaceful". Disregarding even so-called "mere inconvenience" to patrons arising from disruption of service, there were activities involved which could have had no other motive than to terrorize the public and to endanger the safety of the patrons of Laclede and of the public generally. Such acts as indiscriminate diffusion of gas odorant (R. 41, 50) and tampering with devices which might have caused the

release of large quantities of gas (R. 98) could have been aimed solely at arousing fear in the minds of the public. The injection of water into gas mains (R. 46, 123) and tampering with pressure regulating devices (R. 125) caused grave threats to the safety of patrons of Laclede and the public generally. Such activity can in no sense be characterized as peaceful. **Senn v. Tile Layers Union**, 301 U. S. 468, 479.

The appellants' second ground of conflict, that is, that the Missouri Act frustrates the national policy of settlement of labor disputes by free collective bargaining, is, of course, entirely bound in with their first objection based upon limitation on the "right" to strike. As the Missouri Supreme Court pointed out (R. 343), the Missouri law does not embody a system of compulsory arbitration for the settlement of disputes. The parties are left to their own solution with or without seizure. The complaint of the appellants with regard to interference with collective bargaining must, therefore, be based on the idea that depriving them, after seizure, of the right to strike deprives them of their most powerful weapon in the bargaining process. However, under the Missouri law they may be deprived of that weapon only after its use jeopardizes the public health, interest and safety, and only after such activity becomes unlawful and unprotected by law. The employees have no right to employ illegal, non-peaceful methods in order to enforce their demands in collective bargaining, regardless of the merits of their claims. **National Labor Relations Board v. Fansteel Metal. Corporation**, 306 U. S. 240; **International Union v. Wisconsin Board**, 336 U. S. 245.

The appellee submits that the Missouri law does not conflict with the national act or national policy in either of the respects urged by the appellants.

VI.

The Rejection by the 86th Congress of the Holland Amendment and Previous Rejection of Similar Proposals Is of No Significance in the Determination of the Validity of the Missouri Statute.

The appellee submits that no significance may be attached to the defeat in the 86th Congress of the amendment proposed by Senator Holland to the Labor Management Reporting and Disclosure Act of 1959. Public Law 86-257, 105 Congressional Record 6037.

The debate on Senator Holland's proposal was quite limited. Only Senator Kennedy spoke in opposition to the amendment. His remarks (105 Congressional Record 6043) show clearly that the proposed amendment was subject to procedural objections, in that inclusion of the subject of the proposed amendment in the bill under consideration was undesirable to Senator Kennedy, the manager of the bill on the Senate floor.

Furthermore, it is apparent from the remarks of Senator Kennedy that he considered the Holland amendment to be aimed at permitting state statutes such as that involved in the **Amalgamated** case and that he did not consider the proposal to relate to statutes such as that of Missouri. This is brought out clearly by the remarks of Senator Kennedy (105 Congressional Record 6043) to the effect that the Senate should not accept what was, to him, a measure for compulsory arbitration, "particularly when the courts have the power to act in cases in which the health, safety and basic welfare of the citizens of the state are at stake. The courts have been given by the states the power to seize industries to protect the public health and safety". From these remarks, it is quite obvious that Senator Kennedy argued against the Holland amendment on the specific grounds that the states still had the au-

thority to act in emergency situations to which the King-Thompson Act is exclusively applicable.

Appellee therefore submits that the defeat of the Holland amendment in no wise indicates a Congressional policy contrary to the Missouri statute, but that support for the validity of the Missouri statute may equally well be found in the senatorial action.

Equally without significance is the defeat of a similar proposal offered by Senator Holland to the Labor Management Reporting and Disclosure Act of 1958 (S. 3974, 85th Congress, Second Session, 104 Congressional Record 11090-11101). The debate on that proposal clearly shows that procedural problems figured strongly in the senatorial action. Thus, both Senator Smith of New Jersey (104 Congressional Record 11095) and Senator Ervin (104 Congressional Record 11096) stated that they favored the enactment of a proposal such as the Hollard amendment embodied but both felt it necessary to oppose the proposal as an amendment to the bill then under consideration. Other senators such as Dirksen and Cooper objected to the form of the proposed amendment (104 Congressional Record 11100).

The failure to pass Senate Bill 2650 of the 83rd Congress which contained a similar provision is again of no significance insofar as the validity of the Missouri statute is concerned. Discussion of that measure in the Senate shows that again the Senate's failure to act favorably upon it was related to a large extent to procedural matters, particularly in the handling of the measure by the Committee on Labor and Public Welfare (100 Congressional Record 6193-6202).

Of interest in connection with this proposal is the statement of Senator Kennedy which is quite similar to that made in connection with the proposal at the last session

of Congress. The Senator stated (100 Congressional Record 6110):

> "First. It is not generally realized that the States already have extensive powers to act in emergencies of this sort. The decisions of the Supreme Court make it clear that the State under the Taft-Hartley law retains the authority to exercise its basic police powers, and to protect the public health and safety by all available means consistent with the Taft-Hartley Act, including the seizure of plants, the injunction of violence, the protection of workers crossing picket lines, the operation of facilities by public employees or National Guard men, the prevention of injurious conduct which the N. L. R. B. is powerless to prevent, the prohibition of mass or coercive picketing, and the provision of violence, breaches of peace, trespasses on private property, interference with the public highway, sit-down strikes, mutiny, partial strikes, and even peaceful picketing where other contemporaneous violence stems from the dispute which led to the picketing."

Certainly, the reliance by opponents to the proposals of Senator Holland upon the inherent state power to act in emergency situations deprives any argument against the validity of the Missouri statute based upon congressional rejection of such proposals of any weight. Such fact, coupled with the procedural problems which the proposals encountered, forecloses the placing of any significance upon the congressional action.

CONCLUSION.

The appellee respectfully submits that the cause before this Court is now moot. Should the Court, however, consider the matter on the merits, the appellee respectfully submits that Missouri's King-Thompson Act is a valid

exercise of the authority and obligation of the State of Missouri to its citizens to protect them in emergency situations arising from labor disputes in public utilities. It is not *in conflict* with federal laws and remains valid and enforceable. Appellee respectfully submits that the judgment of the Supreme Court of Missouri should, on the merits of the cause, be affirmed.

Respectfully submitted,

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APPENDIX A.

"Twelve Years Under the King-Thompson Act." Report of the State Board of Mediation (1959), page 21:

Seizure Cases. There have been seven seizure cases in Missouri public utilities since the King-Thompson Act was enacted in 1947, as listed below. Seizure was invoked by the governor in each case after a finding was made by him by proclamation that the public interest, health and welfare were jeopardized by the strike or threatened strike.

Seizure Cases Under the King-Thompson Act.

No.	Year	Case No.	Style of Case	Seizure Started	Seizure Ended
(1)	1950	157	Kansas City Public Service Co. Div. 1287, Amal. Assn. of St., Elec. Rlwy. & Mtr. Coach Emp. of America	4/29/50	12/11/50
(2)	1950	164	St. Louis Public Service Co. Local 788, Amal. Assn. of St., Elec. Rlwy. & Mfr. Coach Emp. of America	8/10/50	10/19/50
(3)	1955	560	St. Louis Public Service Co. Div. 788, Amal. Assn. of St., Elec. Rlwy. & Mtr. Coach Emp. of America	10/11/55	11/23/55
(4)	1956	645	Laclede Gas Company. Local 8-194, Oil, Chemical & Atomic Workers Int'l Union	7/ 5/56 4 p. m.	10/31/56
		646	Laclede Gas Company Local 8-6, Oil Chemical & Atomic Workers Int'l Union		
		647	Laclede Gas Company Local 8-169, Oil, Chemical & Atomic Workers Int'l Union		
(5)	1956	650	Kansas City Power and Light Co. Local 412, IBEW	7/ 6/56	7/17/56
		651	Kansas City Power and Light Co. Local 1464, IBEW		
		652	Kansas City Power and Light Co. Local 1613, IBEW		
(6)	1957	708	Kansas City Power and Light Co. Local 1464, IBEW	8/31/57	6/25/58
		709	Kansas City Power and Light Co. Local 412, IBEW		
		710	Kansas City Power and Light Co. Local 1613, IBEW		
(7)	1957	737	Kansas City Public Service Co. Div. 1287, Amal. Assn. of St., Elec. Rlwy. & Mtr. Coach Emp. of America	11/ 6/57	3/ 6/58

APPENDIX B.

"Twelve Years Under the King-Thompson Act." Report of the State Board of Mediation (1959), pages 24-27:

The complete list of sixteen **Non-seizure Strikes** under the King-Thompson Act follows, the last one being on Union Electric Company property on August 11-12, 1958:

Non-Seizure Cases Under the King-Thompson Act.

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(1)	1948	24	Associated Highway Carriers, In. Local No. 41—Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Kansas City)	3/ 8/48	3/14/48
			On March 8, 1948, the employees left their jobs and remained on strike until a new contract was agreed upon on March 14, 1948. (Board Minutes of March 26, 1948, pp. 20 & 21)		
(2)	1952	267	Southwestern Bell Telephone Co. Communications Workers of America, Division 20	3/ 6/52	3/10/52
			On March 6, 1952, employees at St. Louis went on strike which erupted over the refusal of four St. Louis linemen to work in the rain. After several meetings of the company and union with Federal mediators and Mr. Rogers they were able to end the strike on March 10, 1952. (Board Minutes of March 17, 1952, p. 177)		
(3)	1952	280	Capital City Telephone Company Local No. 2, IBEW	3/28/52	4/ 2/52
			On March 28, 1952, twenty employees engaged in a walkout. There were no picket lines, therefore, there was no interruption of services. The main dispute concerned seniority rights. With the assistance of the State Board of Mediation the company and union were successful in ending the strike on April 2, 1952. (Board Minutes of April 1, 1952, p. 179)		
(4)	1952	367	Motor Carriers Council of St. Louis Local 600, District 9, Teamsters, Chauffeurs', Warehousemen & Helpers of America (St. Louis)	6/30/52	8/ 2/52
			On June 30, 1952, 2,700 AFL truck drivers went on strike paralizing freight movement in and out of St. Louis. After 32 days the strike was settled in Mayor Darst's office on August 1, 1952. This Board left the dispute with the parties and local officials. (Board Minutes of August 18, 1952, p. 191)		
(5)	1952	293	Grundy Electric Coop., Inc. Local No. 53, IBEW	8/29/52	8/31/52
			On August 29, 1952, twenty employees "quit" their jobs. The company accepted their resignations. After several meetings of the company and union the strike was ended on August 31, 1952. The Board Chairman assisted in mediation. (Board Minutes of September 8, 1952, p. 194)		

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(6)	1953	418	Capital City Telephone Company Jefferson City Local 2, IBEW	2/27/53	4/ 2/53

On February 27, 1953, twenty-two maintenance men walked off their jobs. The issue in dispute being seniority rights. After conferences with the State Board of Mediation the union and company were successful in reaching an agreement on April 2, 1953. (Board Minutes, 1953, p. 216)

(7)	1953		Laclede Gas Company Local 8-109, Oil, Chemical & Atomic Workers International Union	3/23/53	3/24/53

On March 24 Mr. Rogers received a call from the Federal Mediation and Conciliation Service, St. Louis, reporting "wildcat" strike precipitated by dispute over transfer of foreman from one work assignment to another, allegedly in violation of contract agreement. Locals 8-6, 8-194, walked out in sympathy with the foremen union. Mr. Rogers conferred with President Otto by telephone. Agreement reached to submit the dispute to arbitration. Strike ended then. (Board minutes April 20, 1953, p. 221)

(8)	1953	432	St. Louis Public Service Company Div. 788—Amal. Assn. of St., Elec. Rlwy & Mtr. Coach Employees	7/ 1/53	7/ 2/53

At midnight June 30, 1953, an unauthorized strike of bus and streetcar operators began. The employees were dissatisfied because a new contract covering wages had not been negotiated at the expiration of the old contract. Mr. Rogers and other board members promptly called for conferences with the parties. At 4:00 p. m. on July 2 nearly 500 buses and nearly 300 streetcars returned to services. By 8:00 a. m. on the morning of July 3, service was rapidly approaching normal, thus ending a two-day "wildcat" strike. (Board Minutes of August 25, 1953, pp. 230-231)

(9)	1953	451	Southwestern Bell Telephone Company Communications Workers of America	8/20/53	8/21/53

At 6:00 a. m. on August 20 a general strike in a six-state area of 53,000 CWA members went on strike and placed pickets around Missouri exchanges. Wages and other issues were unsettled. After several unsuccessful meetings of the union and company with the Federal mediators and Mr. Rogers, Governor Donnelly issued a statement demanding the strike be ended in 48 hours. At the deadline, the parties were reviewing and confirming all agreements reached since negotiations began. With this hopeful sign Mr. Rogers advised Governor Donnelly to withhold further action until the morning of August 31. Between 6:00 p. m. August 30 and 7:00 a. m. August 31 the parties resolved all differences and signed a "settlement agreement." The strike was ended after eleven days. (Board file 1953)

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(10)	1953	359	Kansas City Power & Light Company Local 1464, IBEW	9/18/53	9/22/53

On September 18, 1953 a "wildcat" strike of approximately 500 employees was started by 140 linemen over a neglect to follow safety rules in repairing one of the lines. After several mediation conferences with Mr. Rogers, the union and company were successful in reaching a settlement on September 22 1953. (Board Minutes of October 26, 1953, pp. 239 & 240)

(11)	1954	505	Transcontinental Bus System, Inc. Continental Central Lines Brotherhood of Railroad Trainmen	7/ 5/54	10/ 7/54

On July 5, 1954, approximately 300 bus operators went on strike. After calling several meetings of the parties in Kansas City in September, the Board was successful in helping them reach a settlement on October 7, 1954. The bus operators had been on strike 87 days. (Board Minutes of August 30, 1954, pp. 35, 36 & 37)

(12)	1954	511	Kansas City Power & Light Company Local 1613, IBEW (Clerical Employees)	7/22/54	7/22/54

At 7:00 a. m. on July 22, 1954, Local 1613 struck the Company. Picket lines were put up which Locals 1464 (maintenance employees) and 412 (power plant employees) declined to cross. In midmorning July 22 Governor Donnelly appealed to Local 1613 to remove the picket lines and go back to work. Mr. Rogers succeeded in arranging a meeting between Mr. Frank Jacobs and Mr. Harry Munsell and negotiating committees late in the afternoon of July 22. The twelve-hour strike was ended immediately. There was no interruption of utility service to the public. (Board Minutes July 21, 1954, p. 28).

(13)	1955	563	Missouri Water Company District 50, UMWA	3/23/55	3/25/55

Strike occurred from March 23 to March 25 on account of refusal of agreement to lay heavy water pipes in trenches by hand instead of by hoisting machines. Settlement was made by Mr. Rogers and the men all returned to work without loss of seniority. (Board 1955 file)

(14)	1955	516	Laclede Gas Company Local 8-6, Oil, Chemical & Atomic Workers	5/13/55	5/15/55

On May 13, 1955, approximately 2,000 employees went on "wildcat" strike. It started about overtime the meter readers claimed when they worked during a recent heavy rain. After a meeting of the company representatives, the CIO Oil, Chemical & Atomic Workers Union and the federal conciliators the strike was settled and the pickets were withdrawn immediately. There was no interruption of services. (Board Minutes of May 14, 1955)

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(15)	1957	744	Pemiscot-Dunklin Electric Cooperative Hayti Local 702, IBEW	12/21/57	12/21/57
			On December 21, 1957, this strike was caused by a discharge dispute.		
(16)	1958	778	Union Electric Company Local 1439, IBEW	8/11/58	8/12/58
			On August 11, 1958, 1,600 Union Electric Company maintenance and repair men walked off their jobs when the Union representatives turned down a company offer of a 5 per cent wage increase and other benefits similar to offers accepted recently by two unions representing Union Electric Company employees. Picketing was called off by IBEW International officers stating that the workers were ordered to return to their jobs since the International officers felt a more substantial and rational agreement could be reached through negotiations than through a strike.		

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 42

LOCAL NO. 86, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

REPLY BRIEF FOR APPELLANTS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

REPLY BRIEF FOR APPELLANTS.

---

1. The Constitutional Question Is Not Moot and Should Be Decided in This Case.

Appellee contends (Br. p. 14) that appellants' entry into a contract with Laclede after seizure was "beyond the control of the State of Missouri". But appellee does not deny that Missouri's injunction compelled appellants either to work indefinitely on terms and conditions of employment unilaterally dictated by Laclede, or accept the best collective bargaining contract they could get while their right to strike was being illegally withheld. By choosing the lesser of these two evils, appellants did not waive their right to contest the constitutionality of Missouri's action in

placing them in that dilemma. *Union Pac. R. R. Co.* v. *Pub. Service Comm.*, 248 U. S. 67, 69-70; *Altvater* v. *Freeman*, 319 U. S. 359, 365-366. Missouri cannot be allowed to escape responsibility for the fact that "the circumstances which gave rise to the seizure * * * ceased to exist." (Brief for appellee, p. 14.) "Were it otherwise, as conduct under duress involves a choice, it always would be possible for a State to impose an unconstitutional burden by the threat of penalties worse than it in case of a failure to accept it, and then to declare the acceptance voluntary * * *." *Union Pacific R. R. Co.* v. *Pub. Service Comm., supra.* That the State did not directly order appellants to enter into a contract with Laclede "does not end inquiry into" the "practical effect" of the seizure. *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 461. This Court will not overlook that the very object (see our main brief, p. 23), as well as the inevitable consequence, of the Missouri seizure scheme is to compel settlement of labor disputes in public utilities. Since responsibility for the events which resulted in termination of the seizure rests with the State, the case cannot be moot. *So. Pac. Terminal Co.* v. *Int. Comm. Comm.*, 219 U. S. 498, 514.[1]

In any event, it certainly cannot be suggested that to determine now the constitutionality of Missouri's illegalization of appellants' conduct in continuing the strike after seizure would be without practical consequences. Appellee argues (Br. pp. 12-13) that the heavy penalties and liabilities to which appellants subjected themselves by violating

1. The seizure in *Harris* v. *Battle*, 348 U. S. 803, of course, imposed no such oppressive alternatives on the union there involved. Its members were not even required during seizure to work for the State of Virginia, much less to work for a private company on terms unilaterally imposed by it. While it was in that case argued that the threat to invoke the Virginia law in future disputes constituted a continuing barrier to free collective bargaining, it was not contended that settlement of the labor dispute which resulted in termination of the seizure was itself the product of duress operating upon the union as a consequence of seizure.

the Act should be disregarded because Laclede has not yet deprived appellants' members of their seniority rights, and the constitutional question "may" be determined in the pending actions to collect monetary penalties. But loss of seniority is not left to Laclede's discretion. That Laclede has not yet yielded to the Act's compulsion may reflect nothing more than its own doubts of Missouri's constitutional power to illegalize continuation of the strike. As long as Missouri and Laclede give no assurance that in this respect the Act will not be enforced there is "a definite threat to interfere with [possessors] of the menaced rights by a penalty for an act done in violation of the claimed restraint", and there is "no reason why a declaratory judgment action, even though constitutional issues are involved, does not lie". *United Public Workers* v. *Mitchell*, 330 U. S. 75, 92, 93; *Connecticut Mut. Life Ins. Co.* v. *Moore*, 333 U. S. 541, 550; *St. John* v. *Wisconsin Board*, 340 U. S. 411, 414; *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 573, note 41.

A fortiori is that true with respect to the monetary penalties, for those the State is admittedly seeking to collect. *Cf. Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 459-460. Appellee would have this Court delay passing on Missouri's power to illegalize continuation of the strike until the penalty suits reach this Court. But when appellants raised that issue in one of the penalty suits, No. 46,664, appellee asserted that the constitutional question was *res judicata* by virtue of the declaratory judgment in the instant case and the trial court agreed. (R. 318, 331, 333-334.) *Rodney* v. *Gibbs*, 184 Mo. 1, 87 S. W. 187; *Norwood* v. *Norwood*, 353 Mo. 548, 183 S. W. 2d 118; *cf. United States* v. *Mottsingwear, Inc.*, 340 U. S. 36, 38; *Restatement of Judgments*, Sec. 77, Comment b. Appellants' liability for monetary penalties as a result of their admitted violation of the Act is a major factor in establishing that the declaratory judgment case

was and is a live and justiciable case and controversy. Since Article III imposes no bar, disposition of this case depends on decision of the constitutional questions. Their adjudication here is both necessary and appropriate.

In *La Crosse Telephone Corp.* v. *Wisconsin Board*, 336 U. S. 18, 21-24, this Court passed upon the constitutionality of Wisconsin's assertion of power to regulate La Crosse's labor relations on appeal from a mere certification which itself "was not in the form of a command", and despite the fact that the employer could be compelled to bargain with the certified union only through a separate unfair labor practice proceeding. This Court did not postpone adjudication of the constitutional question to the unfair labor practice case despite the clear possibility that the State Board might, on other grounds, decide that case in favor of the employer. 336 U. S., at 23. See also, *St. John* v. *Wisconsin Board*, 340 U. S. 411.

2. The State Court's Finding of "Emergency" Does Not Distinguish This Case from Amalgamated; Virtually Identical Findings Were Made by the Wisconsin Supreme Court in No. 438.

Appellee and its associate amici would distinguish this case from *Amalgamated* on the ground that the Missouri Supreme Court found (R. 346-348) that the strike resulted in a substantial disruption of gas service; that the public interest, health and safety were jeopardized and that an "emergency" existed. (Brief for Laclede, pp. 2-3; Brief for Missouri State Chamber of Commerce, p. 16; Brief for Kansas City Power & Light Company, pp. 10-14; Brief for Chamber of Commerce of Metropolitan St. Louis, pp. 6-10.) They overlook the fact that in the companion case decided in the *Amalgamated* opinion, *United Gas Coke & Chemical Workers of America, etc.* v. *Wisconsin Board*, No. 438, October term, 1950, 340 U. S. 383, 386, the Su-

preme Court of Wisconsin had made almost identical findings.

In the *United Gas* case a union and its officers were held in contempt for ignoring a state court restraining order which required them to call off a strike against the gas company. The strike began at 6:00 a. m., October 5, 1949. In its opinion, the Supreme Court of Wisconsin detailed the consequences (258 Wis. 1, 4, 44 N. W. 2d 547, 549):

> At 11:00 a. m. the public was advised to curtail consumption of gas and an appeal to consumers of gas was made to shut off the service; the steam pressure dropped to zero in the boiler room and no further pumping could be done with the main pumping facilities; the fires had to be pulled from the boilers reducing the steam pressure, and all facilities had to be stopped; a minimum pressure in the distribution system was kept in order that the air would not get into the mains so as to prevent any explosions due to the mixture of gas and air in the distribution system; the send outs dropped to twenty five per cent of what they had been previously. Low pressure in the system created *a dangerous condition fraught with the possibility of infinite injury to the public*. The public was advised by radio broadcasts and through the newspapers to shut off appliances and to shut off the service at the meter. (Emphasis supplied.)

The restraining order was signed at 12:55 p.m., and served at 2:00 p. m. The Wisconsin Supreme Court pointed out (258 Wisc., at 5; 44 N. W. 2d at 549), that the requirement of immediate compliance was embodied in the restraining order "[b]ecause of the seriousness of the situation already referred to resulting from the partial or complete stoppage of the essential service of furnishing gas to the public . . . ." And it predicated state authority to enforce the challenged restraining order (258 Wisc., at 7-9, 11 N. W. 2d at 550-551), squarely on the theory that state power to protect the public health, safety and welfare

in "local emergencies" arising out of public utility strikes was not superseded by the National Act as construed in *United Automobile Workers* v. *O'Brien*, 339 U. S. 454.

This Court, of course, did not upset the Wisconsin Court's finding that an emergency existed or challenge the bona fides of its declaration that the order was issued to protect the public health and safety. It reversed the contempt conviction on the ground that the Wisconsin Act, as applied by the Wisconsin courts in these circumstances, conflicted with national policy. *Cf.* dissenting opinion, 340 U. S. 399, 401, n. 2. To argue, as does appellee, Br. pp. 18-19, that this Court's rejection of Wisconsin's preemption theory was mere "dictum" or, as does amicus Laclede (Br. pp. 17-18, and note 1), that this Court did not decide but rather reserved the question whether Congress left the states power to enjoin public utility strikes which create a local emergency, is not merely to misread this Court's opinion, which, after noting that the Wisconsin Act was not "limited" to "local emergencies", proceeded to dispose of the Act as it applied to them, 340 U. S. 393-394, 397-398, but to disregard the fact that the holding invalidated an *emergency* injunction.

The insistence of appellee (Br. 16-17, 18-19, 20, 30) and amicus Laclede (Br. pp. 17-19, 24, 27, 32) that the Wisconsin Act was struck down because this Court found it a "comprehensive code for the settlement of labor disputes," rather than a measure to safeguard the public against breakdown of utility service flies in the face of this Court's contrary statement. In *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 480, the Court said:

> "In *Amalgamated Association* v. *Wisconsin Employment Relations Board*, *supra*, the statute was directed at the preservation of public utility services and not at maintenance of sound labor relations but the State's injunction was reversed."

Wisconsin's Act was no less predicated on the "emergency" theory than Missouri's is, *i. e.*, the Wisconsin Act too applied only to those strikes which interrupted or threatened to interrupt essential service. 340 U. S., at 387, and note 4. The "declaration of policy" of the Wisconsin Act, Ch. 414, Laws of Wisconsin, 1947, Section 111.50, stated that such interruption "results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an *emergency* justifying action which adequately protects the general welfare." (Emphasis supplied.) This Court's observation in *Amalgamated*, upon which appellee so heavily relies, that application of the Wisconsin Act was not limited to emergency situations was addressed to the fact that that Act had "been invoked to avert a threatened strike of clerical workers of a utility." 340 U. S., at p. 394, note 19. The same is true, as this case shows, of the Missouri Act, for appellant Local 8-194 is composed entirely of clerical workers (R. 338; 34) and the Missouri Act was here invoked to illegalize their strike.

Appellee's argument (Br. pp. 19-20; Br. for amicus Laclede, pp. 11-19, 21-32), that state outlawry of public utility strikes enjoys a special exemption from preemption if outlawry is accomplished through invocation of the state's power to protect the public health and safety, is incompatible with this Court's determination in *Amalgamated*, 340 U. S. 383, 394-395, note, 397-398, that Congress decided, on balance, to protect the right to strike "in spite of the inconvenience, *and in some cases perhaps danger*, to the people of the United States which may result from the exercise of such right." (Emphasis supplied.) To permit the states to use such inconvenience or danger as a basis for outlawing exercise of the right would allow the

to reverse Congress' judgment[2] in a field in which Congress, being empowered under the commerce clause to legislate, is, by virtue of Article VI, supreme.

3. Unauthorized Acts of Unidentified Third Parties May Not Be Utilized to Transform a Peaceful Strike Into an Unprotected or Unlawful One.

To remove this strike from the preempted and protected category of "peaceful strikes", appellee (Br. pp. 29-30), like the court below (R. 346-348), relies upon evidence that unidentified third parties committed "acts of sabotage" (R. 348). But the court below specifically found that "the evidence is not sufficient to show that the defendants were responsible for these acts" (R. 348), and acknowledged that there was no evidence of "violence traceable to the defendants" (R. 351). For all that appears these acts of violence and sabotage may have been committed by *agents provocateurs*. Under federal law, such conduct by unidentified third parties does not rob a strike of the protection accorded it by Sections 7 and 13; Missouri's reliance upon it is itself in irreconcilable conflict with federal law.

It has long been well established that "proof of individual wrongdoing is a prerequisite" to disqualification of a striker from the National Act's protection and that "absent an agency relationship" neither unions nor employees may "be charged with misconduct committed by others." *Garment Workers* v. *N. L. R. B.*, 237 F. 2d 545, 549-550, 551, 552, and cases collected at footnotes 13 and

2. As Wisconsin frankly put it in its brief to this Court in the *Amalgamated* case, Brief for Respondents in Nos. 329-330, Oct. Term, 1950, p. 17, "the legislature chose to place a higher value upon preventing the inconvenience and danger to the general public resulting from a cessation of essential public utility services than upon the complete freedom of employees to bargain over the terms of employment, with a strike * * * as the employee's alternative to agreeing to terms they consider undesirable."

15; cf. *N. L. R. B.* v. *Local Union No. 1229*, 346 U. S. 464, 474, 475.

Only once has the National Labor Relations Board suggested that a duty may rest on strikers who are not personally guilty of any acts of misconduct to abandon their strike if others engage in acts of violence. In *B. V. D. Company, Inc.*, 110 NLRB 1412, 1413-1416, the Board found that "widespread physical violence, destruction of property, intimidation, and threats * * * accompanied the strike." It found, 110 NLRB, at 1416, that these acts were "all committed in furtherance of the strike * * * by identified or unidentified strikers or pickets or by outsiders who came to the aid of the strikers either on the the express invitation or with the tacit approval of the Union." It held that "Whether or not the strikers expressly authorized such conduct * * * they invited and accepted the benefit of it." The Board concluded that under these circumstances strikers who were not shown to have themselves authorized or participated in the violence were required "by admonishment, denunciation, or public pronouncement" to dissociate themselves from it or else abandon picketing. By remaining silent and continuing to picket, the Board held, the strikers forfeited the protection of the Act and their right to reinstatement with back pay.

The Court of Appeals for the District of Columbia reversed. *Garment Workers* v. *N. L. R. B.*, 237 F. 2d 545, 549, *et seq.* It held that to draw "a conclusion of ratification" from "mere failure to abandon picketing would curtail an important statutory and constitutional right." 237 F. 2d 545, 551. It repudiated the Board's effort to tie the violence to the picketing where "[n]o connection between the two was shown." 237 F. 2d at 552. It ordered the Board to reinstate with back pay the strikers who were not proven to have participated in or au-

thorized the violence. The Board acquiesced in this reversal (*B. V. D. Company, Inc.*, 117 NLRB 1455), and has since adhered strictly to the established rule. See, *e. g.*, *Morris Fishman & Sons, Inc.*, 122 NLRB No. 165, *slip op.* pp. 2-3.

In the instant case not only is there no evidence that any of the defendants participated in or authorized any act of violence or sabotage; the commission of such acts ran entirely counter to the Union's policy, which was to provide continuing protection to the public against hazards which might arise during the course of the strike. (Brief for appellants, note 5, pp. 6-7.) If unauthorized and unidentified third parties could transform appellants' peaceful strike into a "non-peaceful" one the "rights afforded to employees by the Act would be indeed illusory." *Republic Steel Corporation* v. *N. L. R. B.*, 107 F. 2d 472, 479 (C. A. 3).

In *Youngdahl* v. *Rainfair, Inc.*, 355 U. S. 131, this Court held that while, in view of the strikers' past misconduct, the state was empowered to enjoin "future acts of violence, intimidation and threats of violence by the strikers and the union, yet it is equally clear that [the state] court entered the pre-empted domain * * * insofar as it enjoined peaceful picketing * * *." 355 U. S., at 139. It was necessary, said the Court, to distinguish the "picketing proper", which was peaceful, from "the activities around the headquarters," which were not. (*Ibid.*) If a state may not seize upon acts of violence committed by the strikers themselves to illegalize peaceful picketing, *a fortiori* may it not seize upon acts of violence committed by unidentified third parties, not shown to have been authorized by the Union, to illegalize a peaceful strike.

4. Congress Considers Token Seizure-No-Strike Schemes Incompatible With National Policy.

Appellee insists (Br. p. 18) that "The Missouri statute, not involving compulsory arbitration, is not of the pattern of schemes rejected by Congress." But appellee ignores this Court's holding in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586, that Congress "refused" to "provide for seizure under any circumstances," and the demonstration in Mr. Justice Burton's concurring opinion, 343 U. S., at 657, that "authority to seize an affected industry" was deliberately omitted because "Collective bargaining, rather than governmental seizure, was to be relied upon." To support this conclusion Mr. Justice Burton set out in footnote 4 of his opinion Senator Taft's famous statement, noting that "Part of this quotation was relied upon by this Court" in the *Amalgamated* case, 340 U. S. 383, 396, note 21.

Appellee also argues (Br. p. 33) that Senator Kennedy's statements in opposition to the Holland amendment show that he does not consider seizure schemes like Missouri's to be barred by the *Amalgamated* decision. The contrary is true. For in the statement quoted by appellee (100 Cong. Rec. 6110) Senator Kennedy pointed out that the only means a state may invoke to protect the public health and safety in emergencies are means "consistent with the Taft-Hartley Act." Seizure, as under the Virginia law, by which a state undertakes to operate a utility on its own account and itself becomes the employer may well be consistent with the Taft-Hartley Act because that Act exempts entirely employment relationships in which a state is the employer. Token seizure, however, by which a state merely prevents employees of a private employer from striking, and requires them to work indefinitely on the employer's terms, is clearly inconsistent with the Act.

Nothing in Senator Kennedy's remarks suggests that he believed that such a seizure scheme is compatible with the *Amalgamated* decision. Indeed, if, apart from federal protection and preemption, the right of private employees to strike is not entirely an illusion, the Missouri seizure-no-strike scheme must be deemed to offend the Fourteenth Amendment as well.

Respectfully submitted,

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No. 42

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LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*

vs.

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF FOR THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, AFL-CIO, *AMICUS CURIAE*

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BRIEF FOR THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, AFL-CIO, *AMICUS CURIAE*

INTRODUCTORY STATEMENT

The appeal in this case involves a Missouri statute known as the King-Thompson Act (Ch. 295, R.S. Mo. 1949), which provides, *inter alia*, that in the event of a threatened or actual strike by employees of a "public utility" the State may seize the utility and upon such seizure a strike by the employees of the utility becomes unlawful. The question presented is whether the application of this seizure and strike-prohibition statute to a strike involving a privately owned gas company whose operations affect interstate commerce is in conflict with the Constitution of the United States.

This brief *amicus curiae* is filed on behalf of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL-CIO, (hereinafter referred to as the Amalgamated Association) with the consent of the parties in this case. The Amalgamated Association is a labor organization representing employees engaged in the operation and maintenance of buses, streetcars, and similar vehicles used in local and intercity public passenger transportation. The Amalgamated Association is the dominant union in this field in the United States. It represents its membership in collective bargaining through several hundred Local Divisions, including a number whose members comprise the employees of the public transit systems in various cities in Missouri.

Included in the definition of a "public utility" under the King-Thompson Act (Sec. 295.020) is "transportation excepting railroads." As a consequence, collective bargaining by the Local Divisions of the Amalgamated in Missouri has been regulated and affected by the King-Thompson Act, and the membership of those Local Divisions has been subjected to the seizure and strike-ban provisions of that Act. In fact, since the statute in question was first enacted in 1947 the State of Missouri has, pursuant to the Act, seized public utilities where strikes were threatened or in progress on seven occasions. Four of these seven seizures have involved the transit systems in St. Louis and in Kansas City, Missouri, whose employees are represented by Local Divisions of the Amalgamated Association, and whose operations affect interstate commerce.[1] A penalty suit arising out of one of those seizures against the St. Louis Local Division of the Amalgamated Association is still pending.[2]

The Amalgamated Association has been subjected to King-Thompson seizures in the past, and, as the court

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[1] *Twelve Years Under the King-Thompson Act*, (published by the Missouri State Board of Mediation, January, 1959) p. 21. The National Labor Relations Board has asserted jurisdiction over the St. Louis and Kansas City transit systems. See, for example, 71 N.L.R.B. 160, and 47 N.L.R.B. 1.

[2] *Twelve Years Under the King-Thompson Act*, *supra*, p. 22.

below in the instant case recognized, "seizures of utilities in similar situations are likely to occur again." (R. 341) In addition, the Amalgamated respectfully directs the Court's attention to the fact that there are at least fifteen other states which have enacted laws regulating strikes in public utilities and providing for compulsory arbitration and/or seizure. (104 Cong. Rec. 9985-9986) Like Missouri, some of these states have continued to apply those statutes to public utilities whose operations affect interstate commerce, with the result that the employees of those utilities, represented by the Amalgamated Association and other labor organizations, are denied the right to strike and to engage in free collective bargaining that the National Labor Relations Act was intended to guarantee and protect. The issues in the instant case have a direct bearing upon the question of the validity of such statutes as applied to transit systems and other public utilities whose operations affect interstate commerce.

In the light of the foregoing it is clear that the Amalgamated Association has a direct and vital interest in the very important issues before the Court in this case. We submit this brief *amicus curiae* in support of the Appellants. For the reasons set forth hereinafter we urge this Court to reverse the decision of the court below and to hold that the application of the seizure-strike-ban provisions of the King-Thompson Act to a public utility whose operations affect interstate commerce was in violation of Article VI of the Constitution of the United States.

SUMMARY OF THE ARGUMENT

1. The decision in this case is governed by *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U.S. 383. Just as the Wisconsin compulsory arbitration-strike-ban statute was held invalid in that case, so the Missouri seizure-strike-ban statute in this case must be set aside. Both statutes conflict with federal law and federal policy and constitute an intrusion into a field preempted by Congress.

The grounds upon which the court below sought to dis-

tinguish the instant case from the *Amalgamated* decision are wholly untenable. The fact that the Missouri statute was enacted for the purpose of utilizing the State's police power in an effort to avoid "local emergencies" resulting from public utility strikes does not save that statute from fatal conflict with the federal law and policy. The same contention was considered by this Court in the *Amalgamated* case, and, on the basis of the legislative history of the federal Act, specifically rejected. That view was later reaffirmed in *Weber v. Anheuser-Busch*, 348 U.S. 468.

Equally without merit is the attempt to distinguish this case from *Amalgamated* on the basis of differences in the form of the two statutes. The fact that Missouri does not ban public utility strikes entirely, but provides for their prohibition whenever the State elects to declare a "seizure" (including instances in which the "seizure" is instituted before any strike takes place) is a difference that has no real substance. Just as surely as did the Wisconsin law, the Missouri statute makes any strike or attempt to strike by public utility employees meaningless.

Nor can any distinction be drawn from the fact that Missouri provides for seizure instead of compulsory arbitration. Both techniques are equally at war with the federal policy of free collective bargaining. The same legislative history that this Court relied upon to show that Congress had rejected compulsory arbitration as a possible technique for the handling of emergency disputes shows that Congress reached the same conclusion with respect to seizure. Both were rejected on their merits as being inconsistent with the national policy, and neither was left to the States for their use in any labor disputes affecting interstate commerce.

2. The controlling force of the *Amalgamated* decision in this case finds further and conclusive confirmation in the fact that in the years since that decision was announced Congress has on several occasions specifically refused to enact legislation which had as its avowed purpose the overruling of that decision. Such bills have been introduced in almost every session of the Congress since 1951. On two

occasions, in 1958 and in 1959, they have been debated on the floor of the Senate and in each instance they failed of passage. Instead, in the recent Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, Congress amended the Act so as to permit the States to exercise jurisdiction, but only in those instances where the N.L.R.B. declines jurisdiction, and further provided that the Board may not decline jurisdiction if it would have asserted jurisdiction under the standards in force on August 1, 1959. Under those standards the Board asserts jurisdiction over virtually all local public utilities. The states are thus prohibited from acting to restrict public utility strikes by seizure or any other means. The *Amalgamated* rule has been written into the statute; and the Missouri law here involved must be declared invalid.

3. This case is not moot. Any reliance upon *Harris* v. *Battle*, 348 U.S. 803, upon which the suggestion of mootness by an *amicus curiae* in the court below was based, would be wholly misplaced. Among the many factors which distinguish the instant case from the *Harris* case is the fact that in the *Harris* case the labor dispute which gave rise to the seizure had been settled, and the seizure itself, had been lifted before the initial trial in the matter in the State court. And with the lifting of the seizure no outstanding claims for injury or liability arising out of the seizure remained so far as the record in that case revealed.

ARGUMENT

I—MISSOURI'S REGULATION OF PUBLIC UTILITY STRIKES IS IN CONFLICT WITH FEDERAL LAW AND AN INTRUSION INTO A FIELD FULLY OCCUPIED BY CONGRESS.

To the extent that the King-Thompson Act is utilized, as it was in this case, to prohibit a strike in a public utility affecting interstate commerce it conflicts with federal law and the policy upon which that federal law is based; it intrudes state policy into a field that has been preempted by the federal government; and it is therefore in violation of Article VI of the Constitution of the United States.

That is the clear lesson of the decision of this Court in *Amalgamated Association etc.* v. *Wisconsin Employment Relations Board*, 340 U.S. 383, a decision which is fully dispositive of the question raised by this appeal. In that case a Wisconsin statute which prohibited strikes in certain public utilities and substituted a system of compulsory arbitration was set aside on the ground of federal preemption. In the more than eight years since that decision was announced this Court has made numerous refinements in the doctrine of federal preemption; but the *Amalgamated* decision has lost none of its vitality. It has been cited and reaffirmed by this Court for the basic proposition that a state statute is invalid where it "denied a right which Congress had guaranteed under § 7 of the Taft-Hartley Act — the right to strike peacefully to enforce union demands for wages, hours and working conditions." *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 474-475. In the most recent decision of this Court on a question of federal preemption this Court cited the *Amalgamated* decision as an example of the fact that "When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the states from acting." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 243.

The court below refused to follow the decision in *Amalgamated*. Yet none of the grounds on which it sought, explicity or otherwise, to distinguish the instant case from *Amalgamated* has merit.

The central theme in the decision of the court below is that the King-Thompson Act is saved from unconstitutionality because its "dominant purpose . . . is the protection of the welfare and health of the people . . . It is an exercise of the police power of the state . . . The right of a state to regulate and control public utilities operating within its borders is inherent and referable to the police powers." (R. 344, 345) This reliance on the state's right to regulate public utilities as a part of its police power is wholly

misplaced. This Court has cautioned that "a state cannot avoid the operation of this rule [the rule of federal preemption] by simply invoking the convenient apologetics of the police power." *Kansas City Railway Company v. Kaw Valley Drainage District*, 233 U.S. 75, 79; *Morgan* v. *Commonwealth of Virginia*, 328 U.S. 373. And in *Northern Pacific RR Co.* v. *State of Washington*, 222 U.S. 370, this Court stated, at p. 378:

> "It is elementary . . . that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose to call into play its exclusive power . . ."

The *Amalgamated* decision involved two regulated public utilities, one a public transit system, and the other a gas company of the same character as is involved in the instant case. This Court noted that the decision of the Wisconsin Supreme Court which had upheld the constitutionality of the Wisconsin statute had "stressed the importance of utility service to the public welfare and the plenary power which a state is accustomed to exercise over such enterprises." (340 U.S. at p. 388) This Court, however, specifically rejected the contention that the federal Act left the states free to regulate strikes in local public utilities which give rise to local emergencies. Based upon a careful review of the legislative history of the federal Act and of its administration this Court concluded:

> "No distinction between public utilities and national manufacturing industries has been drawn in the administration of the federal Act, and when separate treatment for public utilities was urged upon Congress in 1947, the suggested differentiation was expressly rejected. Creation of a special classification for public utilities is for Congress, not for this Court." (340 U.S. at p. 391-393)

To the contention that by establishing special procedures for the handling of strikes which may create a national emergency Congress indicated an intent to leave the states

free to regulate strikes which create local emergencies this Court gave this reply:

> ". . . congressional imposition of certain restrictions on petitioners' right to strike far from supporting the Wisconsin Act, shows that Congress has closed to state regulation the field of peaceful strikes in industries affecting commerce. United Auto Workers v. O'Brien, supra, at 457. And where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law." (340 U.S. at p. 394)

Equally without merit is the related contention accepted by the court below (R. 353) that "the King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of disputes in utilities as the Wisconsin Act appeared to be." For one thing, the Missouri statute *is*, in fact, a comprehensive code regulating labor relations in public utilities. Its very declaration of policy (Sec. 295.010) asserts that "the state's regulation of labor relations affecting such public utilities is necessary in the public interest." It imposes requirements with respect to the duration and renewal of collective bargaining labor agreements in public utilities. (Sec. 295.090; 295.100) It provides a special type of compulsory fact-finding procedure applicable to labor disputes in public utilities. (Sec. 295.120) And it even provides penalties where the Mediation Board has found "that any public utility has refused to bargain collectively in good faith with its employees over the terms and conditions of employment." (Sec. 295.200)

But even if this were not so — even if it could truly be said that the Missouri statute did not generally regulate labor relations in public utilities — this would not serve to distinguish this case from *Amalgamated*. In *Weber* v. *Anheuser-Busch*, *supra*, at p. 480, this Court, speaking to this precise point, said:

> ". . . the State cannot be heard to say that it is enjoining that conduct [conduct regulated by the federal Act]

for reasons other than those having to do with labor relations. In Amalgamated Association v. Wisconsin Employment Relations Board, supra, the statute was directed at the preservation of public utility services and not at maintenance of sound labor relations, but the State's injunction was reversed. Controlling and therefore superseding federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised."

Nor is there merit in the attempt of the court below (R. 352-353) to avoid the impact of the *Amalgamated* decision by relying upon certain differences in form between the Wisconsin and the Missouri statutes in question. Surely no material distinction can be found in the fact that the Wisconsin statute outlawed all public utility strikes while the Missouri statute prohibits such strikes after the state has seized the operation. It must be borne in mind that under the Missouri statute any "possibility of labor strife" in public utilities is deemed to constitute a "threat to the welfare and health of the people" (Sec. 295.010), and seizure is authorized not only after a strike has begun but upon the threat of a strike, whenever it appears that "the effective operation of a public utility be threatened . . ." (Sec. 295.180). It is pure sophistry to suggest that the Missouri statute constitutes any less of an interference with the right to strike than did the Wisconsin statute. The right to strike and to engage in peaceful picketing is protected by federal law. State laws which impinge upon that right must yield. And such impingement need not take the form of an outright prohibition against striking in order to run afoul of the supremacy clause. Clearly the limitations on the right to institute or to continue a strike contained in the King-Thompson Act are no less of an interference with federally protected rights than this Court found to be true of the strike vote provisions in *UAW* v. *O'Brien*, 339 U.S. 454.

Likewise, the fact that the Missouri statute uses seizure instead of compulsory arbitration as a device for the ultimate resolution of disputes affords no valid substantive

basis for distinguishing this case from *Amalgamated*. In that case this Court, after reviewing the pertinent legislative history, concluded that the technique of compulsory arbitration employed in the Wisconsin Act "was rejected by Congress as being inconsistent with its policy in respect to enterprises covered by the federal Act, and not because of any desire to leave the states free to adopt it." (340 U.S. at p. 394-395) As this Court found in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, that same legislative history demonstrates beyond any doubt that Congress likewise rejected seizure as a technique for handling disputes in industries affecting commerce. Thus, for example, in the first session of the 80th Congress five separate though identical bills were introduced for the settlement of strikes in public utilities. Significantly, those bills, which failed of passage, were urged by one of their principal sponsors, Congressman Case, on the ground that they would give "local and state governments first opportunity to deal with all disputes within their jurisdiction if they can handle them adequately." (93 Cong. Rec. A1007) But even those bills contained no seizure provisions, and Congressman Case observed that "Government seizure should not be resorted to in any event." (93 Cong. Rec. A1007) In the debates on the floor of the Senate concerning the provisions that ultimately became Title II of the Taft-Hartley Act Senator Taft made it clear that the Congress drew no distinction between compulsory arbitration and seizure so far as conflict with federal policy is concerned. He said:

> "We do not feel that we should put into the law, as a part of the collective bargaining machinery, any ultimate resort to compulsory arbitration, or to seizure, or any other action. We feel that it would interfere with the whole process of collective bargaining." (93 Cong. Rec. 3835)

Congress has rejected seizure as a technique for handling disputes in industries affecting commerce on its merits — on the ground that it conflicts with the national policy of free collective bargaining—and not out of any de-

sire to leave the states free to adopt it, any more than it left the states free to impose compulsory arbitration upon the parties to such disputes.

The Wisconsin statute was declared invalid in *Amalgamated* not only because it denied the federally protected right to strike but also because by denying that right and by adopting a technique that was at odds with free collective bargaining the Wisconsin statute conflicted with the basic purpose and policy of the federal law. That conclusion is applicable in full to the seizure-strike-ban provisions of the Missouri statute. That statute, no less than the Wisconsin law, clashes head-on with the national policy of free collective bargaining.

Collective bargaining is essentially a "give-and-take" process. It presupposes some equality of bargaining power, and requires that at each side of the bargaining table there be a recognition of the power of the other party to enforce its bargaining demands by the use of economic pressure that may be more costly to the party which is the object of such pressure than an intransigent adherence of that party to its position in the negotiations. So far as the employees are concerned, collective bargaining requires that they be free to strike. Even the most ardent advocates of the interests of management have recognized that fact. Ira Mosher, then Chairman of the Executive Committee of the National Association of Manufacturers, testifying before the Senate Committee on Labor and Public Welfare, in 1947, stated:

> "We have to preserve the right to strike if we are going to have good faith collective bargaining over wages, hours, and working conditions. . . ."[3]

Dr. Gustav Peck, senior specialist in labor for the Library of Congress, in a Staff Report to the Senate Committee on Labor and Public Welfare, observed:

> "It is no disparagement of collective bargaining to say that it rests on the right to use the economic power of

[3] Hearings on S. 1126, 80th Cong., 1st Sess. p. 950.

> the strike or the work stoppage to determine or to compromise unresolved issues between unions and managements. Collective bargaining presupposes relatively equal strength of the parties so that each could inflict hard-to-take damage on the other. The appreciation of the power of the other side makes for a respectful inspection of the demands and position of the parties and facilitates the compromises which lead to adjustment and agreement.[4]

Another authority on the subject has stated the point, as follows:[5]

> "In the final analysis, however, what makes collective bargaining work is the risks inherent in a strike. Where the stakes are high, the bargain is never struck until there is no place else to go, nothing left to do, no possible escape from choosing between compromise and battle. Experience has shown over and over again that when government supplies a procedure, management and labor rarely trade out an agreement. Each side hopes that it may get more favorable terms by following the procedure than by settlement. *To put it in a phrase the strike or the fear of a strike is the motive power that makes collective bargaining operate.*" (Emphasis added)

To the extent, then, that the Missouri seizure law interferes with the right to strike it undermines and conflicts with the national policy of collective bargaining. Relieved of any threat that a breakdown in negotiations may lead to a cessation of operations, the employers covered by the law

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[4] *Emergency Disputes Settlement*, Staff Report to the Subcommittee on Labor and Labor-Management Relations, 1952, p. 3. The indispensability to collective bargaining of the right to strike is also pointed out in the following studies: John B. Clark, *The Theory of Collective Bargaining*, American Economic Assn. Quar., April, 1909; John A. Fitch, *Strikes and Lockouts*, Encyclopedia of the Social Sciences, 1934, Vol. XIV, p. 240 ff; *National Labor Relations Bulletin No. 1*, (1940) pp. 8, 10-11; David A. McCabe and Richard A. Lester, *Labor and Social Organization*, 1938, pp. 107-108; The Twentieth Century Fund, Labor Committee, *Strikes and Democratic Government* (1947) pp. 13-14.

[5] Archibald Cox, *The Taft-Hartley Act After Six Years*, Proceedings of the Fifth Annual Conference on Industrial Relations, University of Buffalo (1953).

have no inducement to bargain in good faith, to compromise, to offer reasonable counter-proposals, or to agree to the technique of voluntarily arbitrating the dispute. They need only go through the motions of bargaining, confident that in the event a strike is threatened the Governor will step in and endeavor to maintain continuous operation.

Recognizing that such an attitude toward collective bargaining is bound to prevail whenever seizure or compulsory arbitration is available as an alternative to good faith bargaining, authorities on the subject of collective bargaining have been almost unanimous in their condemnation of both techniques for dealing with labor disputes.[6] In the report of Dr. Peck, referred to above, the following conclusion is drawn from a review of seizures by the Federal Government:

> "The conclusion from the war and postwar seizures must be that seizures can stop or break strikes and provide conditions for continued production. Seizure can also have the practical effect of a dictated contract. *But there is no experience that seizure has promoted collective bargaining by the parties in the dispute or resulted in speeding up the process of coming to agreement.*" (Emphasis added)

The Chamber of Commerce of the United States, appearing before the House Committee on Education and Labor in 1953, took the flat position that "Seizure of private property involved in a labor dispute is not justified." Elaborating on this observation, the statement said:

> "The seizure itself does nothing to solve the labor issues over which the parties are at odds. Its only use is to insure continued production by the imposition of Government controls . . .
>
> "Carried to its logical conclusion, seizure is a distasteful intervention by Government from which only a stalemate can result. As a matter of fact, it is far less effective and more costly in human relations and

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[6] See, for example, 27 Texas Law Review, 587; John R. Commons, *Industrial Economics*, 1934, p. 854; E. E. Cummins, *The Labor Problem in the United States*, 1935, p. 251, 339. See also the authorities listed in fn. 4, *supra*.

efficiency as a means of maintaining needed production than the outright injunction against a strike or lockout . . .

"*It should be borne in mind, therefore, that alternatives to collective bargaining contain a serious hazard for our economic and political traditions and that, in the field of labor relations they offer no real hope of adequate settlement of issues . . .*"[7] (Emphasis added)

The experience of the Amalgamated Association with the New Jersey compulsory arbitration statute and the Virginia seizure statute, as reported by two qualified observers, is worthy of note.

"Prior to the adoption of compulsory arbitration for public utility labor disputes in New Jersey, Governor Driscoll recognized that such legislation might have undesirable effects on free collective bargaining. Early in 1947 he stated: 'We should seek to avoid compulsory arbitration of wage matters, since it would mean the end of collective bargaining, without which neither free enterprise nor free labor can long endure.'[21] In April of the same year, however, compulsory arbitration was made a part of the utility anti-strike law. To what extent has Governor Driscoll's prediction been supported by the events which have followed the enactment?

"The collective bargaining relationship between The Public Service Transportation Company, the largest operator of the city buses in the United States, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees, AFL, is worthy of examination in this respect. These two organizations have been bargaining with each other for more than 50 years. During this entire period there have been no strikes or slowdowns since 1923. The only voluntary arbitration of new contract terms occurred in 1919. It is true they did not avoid several cases before the War Labor Board but with these exceptions the parties prior to compulsory arbitration always reached agreement on their new contract terms without resort to economic force or arbitration. Likewise, although

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[7] Statement of Powell C. Groner, Before the House Committee on Education and Labor, in behalf of the Chamber of Commerce of the United States. *Hearings Before the Committee on Labor and Public Welfare*, 83rd Cong., 1st Sess., Part I, p. 173.

"[21] Minutes of the 1947 New Jersey Assembly, pp. 70-71."

the grievance procedure in their contracts has always terminated in voluntary arbitration, the latter was never employed. One might have expected that such collective bargaining would have continued without much change under compulsory arbitration legislation. This has not been the case. . . .

"In 1947, the first year that compulsory arbitration was effective, the parties were unable to reach an agreement. This was the first peace-time negotiation which failed since 1923. It was only the beginning. In 1948 and again this year the parties have had the major terms of their contracts determined by compulsory arbitration rather than by free negotiation. Thus, free collective bargaining has been ineffective in this relationship and the parties doubt, for reasons which will be presented, that it can ever be revitalized as long as the law is in effect. A number of other New Jersey utility companies, and their unions, have had the same experience. It is highly significant that without exception every company which had new contract terms settled by compulsory arbitration under the Act in 1947 repeated this performance in 1948 . . . . (Thomas Kennedy, *The Handling of Emergency Disputes*, Industrial Relations Research Association, Proceedings of Second Annual Meeting, 1949, p. 14, 19-21.)

"In the case of the local bus industry, the experience under seizure seems to indicate that the Act did contribute in some cases to the breakdowns in collective bargaining. The provisions of the law and requests for fare increases have apparently combined to encourage use of the statute in two ways. On the one hand, it appears that either or both of the disputants have felt that state seizure would force public officials to grant fare increases that would provide revenues sufficient to offset the pay increases demanded by the union. On the other, by resorting to seizure companies could at least postpone, and in some cases avoid, wage increases until they obtained rate relief."
(Robert R. France, *Seizure In Emergency Labor Disputes in Virginia*, 7 Industrial and Labor Relations Review, Cornell University, 351.)

It is clear, therefore, the decision of Congress in 1947 to reject seizure and compulsory arbitration and to adhere

to the policy of free collective bargaining was bottomed on a solid foundation of logic and experience. The decision having been made to continue the national policy of promoting collective bargaining, Missouri was not free to adopt an approach to the handling of labor relations in industries affecting commerce which is in direct conflict with that policy.

II—SUBSEQUENT TO THE AMALGAMATED DECISION CONGRESS HAS REJECTED PROPOSALS DESIGNED TO OVERRULE THAT DECISION.

Shortly after the decision of this Court in the *Amalgamated* case legislation was introduced designed to overrule that decision by amending the National Labor Relations Act so as to provide that nothing in the Act could be construed to nullify the provisions of any state laws which regulate or qualify the right of public utility employees to strike or which prohibits such strikes. Such a bill was introduced in 1951 in the 82nd Congress (S. 1935) but it was never reported out of the Senate Labor and Public Welfare Committee.

In 1954, the Congress was again presented with an opportunity to express its wish as to whether it wanted to amend the Act so as to overrule the decision of this Court in the *Amalgamated* case.

Senator Smith of New Jersey introduced a bill, S. 2650, 83rd Congress, 2nd Sess. (1954), which proposed adding a new subsection to Section 6 of the Act to read as follows:

> "(b)(1) The Board, in its discretion, may decline to assert jurisdiction over any labor dispute where, in the opinion of the Board, the effect on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.
>
> "(2) Nothing in this Act shall be deemed to prevent or bar any agency, or the courts of any State or Territory, from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragrph (1) of this subsection, to assert jurisdiction."

As a related amendment, he further proposed to add to Section 14 a new subsection to read as follows:

"(c) Nothing in this Act shall be construed to interfere with the enactment and enforcement by the States of laws to deal in emergencies with labor disputes which, if permitted to occur or continue, will constitute a clear and present danger to the health or safety of the people of the State: Provided, that no State shall be authorized . . . to take action in any labor dispute in which the Federal Government is acting pursuant to Sections 206 to 210, inclusive, of this Act . . ."

This bill was in accord with the recommendations of President Eisenhower in his message to Congress:

"The act should make clear that the several States and Territories, when confronted with emergencies endangering the health or safety of their citizens, are not, through any conflict with the Federal law, actual or implied, deprived of the right to deal with such emergencies. The need for clarification of jurisdiction between the Federal and the State and Territorial Governments in the labor-management field has lately been emphasized by the broad implications of the most recent decision of the Supreme Court dealing with this subject. The Department and Agency Heads concerned are, at my request, presently examining the various areas in which conflicts of jurisdiction occur. When such examination is completed, I shall make my recommendations to the Congress for corrective legislation." (House of Representatives, Document No. 291, 83rd Cong., 2d Sess., January 11, 1954)

This was further developed in a letter to Senator Smith as follows:

"My associates are still studying this extremely complex problem, and while that study has not as yet been completed, it has gone far enough to develop some conclusions:

"(1) Where the governor of a State determines that a labor dispute is endangering, or will endanger, the health and safety of the citizens of that State, certainly nothing in the Federal law should have the effect of preventing the state from dealing with that dispute. This was covered specifically in my message of January 11.

"(2) Nothing in the Federal law should have the effect of preventing a State from exercising its tradi-

tional police powers for maintaining public order." (Letter of March 26 ,1954, to Senator H. Alexander Smith; see Senate Report No. 1211, 83rd Cong., 2nd Sess., p. 8)

The Senate Committee on Labor and Public Welfare in reporting favorably on the Smith Bill observed that, in addition to giving States the right to act in labor disputes where emergencies exist, even though the enterprises involved are subject to the Act, the bill also permitted the Board to select for decision only those cases substantially interstate in character. The Committee stressed the point that the amendments were substantially along the lines indicated by the President. (See Senate Report No. 1211, 83rd Cong., 2nd Sess., pp. 2, 3, 17, and 18.)

The amendments and the Committee report occasioned vigorous debate on the floor of the Senate. Senator Smith, in advocating the passage of the bill, admitted that the issue of state powers as against federal law was "one of the most controversial subjects in the bill" (100 Cong. Rec. 5836). He expressly stated that his bill would give States the right to act in transit strikes where the transit company was substantially the only means of transportation to large elements of the public (100 Cong. Rec. 5383).

Senator Goldwater introduced an amendment, the object of which was to extend State jurisdiction to companies other than public utilities (100 Cong. Rec. 5840). He stated that the enactment of such a bill presents to the American people "the last chance they will ever have to return to the doctrine of States rights in this field" (100 Cong. Rec. 6198).

During the close of the debate, Senator Cooper stated:

> "With respect to the States-rights amendment, I shall oppose it, because the ultimate result, it seems to me, would be a division of responsibility on labor-management relations affecting interstate commerce between Federal and State Governments. It would mean two jurisdictions, and it could lead to two systems of law, perhaps two contradictory systems." (100 Cong. Rec. 6200)

Despite the administration support the Senate failed to pass the Smith Bill. Rather, on May 7, 1954, it was recommitted by a vote of 50 to 42 (100 Cong. Rec. 6202).

In 1958 Senator Holland introduced the same bill (S. 3692, 85th Cong., 2nd Sess.) which had been introduced in 1951 to overrule the *Amalgamated* decision. It would have amended the National Labor Relations Act to provide that:

> "Nothing in this act or in the Labor Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulates or qualify the right of employees of a public utility to strike or which prohibit strikes by such employees."

The Subcommitte on Labor of the Senate Committee on Labor and Public Welfare held hearings on the proposal, at which Senator Holland testified in favor of the bill, and others, including the International President of the Amalgamated Association, submitted statements in opposition to it. (*Hearings Before The Sub-Committee on Labor*, 85th Cong., 2nd Sess. pp. 465ff.; 1444ff.) The bill was not reported out of the Subcommittee, but Senator Holland introduced the measure on the floor of the Senate. He plainly disclosed the purpose of his proposed amendment in these terms:

> "We offer the amendments in the earnest hope that finally Congress will act to fill this particular legal 'void' — or labor-management 'no man's land' — which fails to assure the continued operation of local public utilities, which dangerous situation was created on February 26, 1951, by a strained interpretation, by the United States Supreme Court, in the so-called Wisconsin case, construing the legislative intent in the passage of the Taft-Hartley Act." (104 Cong. Rec. 9984)

The proposed amendment was debated (104 Cong. Rec. 9984-9995) and after such debate it was voted upon and defeated 60 to 27. (104 Cong. Rec. 9995)

The 86th Congress has very recently enacted the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257). On April 25, 1959, during the debates on

S. 1555, the bill which was subsequently enacted as this new law, Senator Holland introduced the same amendment that he had introduced in 1958 as described above. Again he made it plain that his purpose was to secure legislation that would overrule the *Amalgamated* decision. (105 Cong. Rec. 6037) In support of his plea for permitting the states to regulate strikes in local public utilities he stated:

> "I remind the Senate that the public utilities which serve in these fields are given licenses or franchises by the states in which they serve; that they are regulated by the states in which they serve; that they are given their licenses and franchises in order to serve the public; that they are required to serve the public; that no lockout or shutdown should be permitted." (105 Cong. Rec. 6038)

When the suggestion was made that the matter be submitted to the Committee for further hearings Senator Holland did not withdraw the amendment, and said:

> "I hope . . . that the Senate will take the matter out of the hands of the Committe now by taking favorable action on this very simple amendment to restore to the States the power to handle under their own laws, these relatively few vital industries." (105 Cong. Rec. 6043)

As in 1958, the proposed amendment was again voted on, and again defeated, this time by a vote of 64 to 27. (105 Cong. Rec. 6044)

The refusal of Congress to change a statute when alleged faults are brought to its attention is of special significance in its interpretation and indicates legislative acquiescence in its contemporary judicial construction. *Neuberger* v. *Commissioner*, 311 U.S. 83, 89. From the legislative history reviewed above it is clear beyond all doubt that Congress has specifically affirmed and reenacted the rule of the *Amalgamated* decision. It has refused, as it did in 1947, to create a special classification for local public utility employees. It has again affirmed that such employees, no less than other employees engaged in operations that affect interstate commerce, may not be subjected to state laws which deny or curtail the rights guaranteed to them

under federal law or which conflict with the federal policy of free collective bargaining, as does the King-Thompson Act.

That such is the intent of Congress is plain not only from what Congress has refused to do, but also from what it did do in its recent amendment of the National Labor Relations Act. In Public Law 86-257 Congress provided:

> "Sec. 701. (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:
> "'(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.
> "'(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.'"

The legislative history of these provisions (House Conf. Rep. No. 1147, 86th Cong., 1st Sess., pp. 36-37) underscores what their language already makes clear, namely that these provisions have a two-fold purpose: (1) to allow the States to regulate labor disputes even where the N.L.R.B. has jurisdiction, *provided* that the Board has declined to assert jurisdiction, and (2) to make sure, at the same time, that the Board will not refuse to assert jurisdiction in any case in which it would assert jurisdiction under the standards it had established as of August 1, 1959. Under the standards in effect as of that date the Board asserts jurisdiction over all public utilities whose annual gross volume of business is at least $250,000 or which have inflow or out-

flow across state lines of $50,000 per year, and this, as the Board has noted, covers substantially all local utilities which have any pronounced impact on interstate commerce. *Sioux Valley Empire Electric Association*, 122 N.L.R.B. No. 18.

By enacting into law the present broad exercise by the Board of its jurisdiction over local utilities whose operations affect commerce, and rejecting the attempts to carve such utilities out of the Act for special treatment by the states in their efforts to avoid local emergencies, Congress has left even less room than there was at the time of the *Amalgamated* case for a decision by this Court that would sustain the Missouri statute. Congress has been more than amply appraised of the problems with which local authorities are faced in avoiding disruptions of utility services. It has reaffirmed its policy that those problems are best handled by extending to the parties involved in labor disputes in such utilities all of the factors that make for free collective bargaining unfettered by seizure, compulsory arbitration or any other techniques that militate against free collective bargaining. In applying the King-Thompson Act to utilities affecting interstate commerce Missouri has adopted a policy squarely in conflict with that of the Congress, and that statute, so applied, must be declared invalid.

III—THIS CASE IS NOT MOOT.

The decision of the court below indicates (R. 341) that an *amicus curiae* before that court had urged dismissal of the appeal on grounds of mootness because the dispute which gave rise to the strike by the Appellants had been settled and the seizure lifted. The court below properly rejected the suggestion of mootness (R. 341-342); we assume that if the matter is raised before this Court it will be fully treated in the brief of the Appellants; and we shall not, therefore, discuss that issue at any length in this brief.

It appears, however, that in the court below the suggestion of mootness was predicated upon the decision of this

Court in *Harris* v. *Battle*, 348 U.S. 803. In view of the fact that that case involved the Amalgamated Association, and the undersigned were counsel for the Appellants in that matter, it may be helpful to the Court to point out the very crucial difference in the procedural posture of that case as compared to the instant one.

As is revealed by the documents filed with this Court in that case (Case No. 111, October Term 1954) the plaintiffs brought suit in a Virginia State court to enjoin the enforcement of a Virginia statute providing for seizure in public utility labor disputes. That suit was instituted before the State had effectuated any seizure. The seizure was thereafter effectuated. However, *before the matter came before the state court for the initial hearing in the case* the labor dispute had been settled; the strike had been called off, and the seizure had been lifted. So far as the record in that case revealed, the seizure that had been lifted even before the initial trial in the case left behind it no outstanding claims for injury or liability other than the plantiffs' contention that the threat of the application of the statute in future disputes was an interference with their rights.

Such a situation is hardly comparable to that which is involved in the instant case, and the *Harris* case is no guide to a decision on the mootness issue here. Here, apart from many other considerations, the seizure and the action taken by the Appellants in defiance of the seizure left behind several sources of serious potential liability which hinge upon the question of whether the statute pursuant to which the seizure was effectuated is valid. In these circumstances the question of whether the Missouri statute involved is constitutional can surely not be considered moot. *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U.S. 416, 417.

Nor can the threat, so clearly demonstrated in this record and recognized by the court below (R. 341), to utilize the seizure provisions of the statute in future disputes be lightly discounted. Indeed, in some respects this is the most compelling consideration for rejecting any mootness

contention in this case. This Court has often ruled that one who is a potential victim of an unconstitutional statute need not wait until the injury is actually inflicted but may bring suit in equity to enjoin a threatened enforcement of the statute. *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365; *Petroleum Exploration Inc.* v. *Public Service Commission*, 304 U.S. 200. Surely one who has already been victimized by an unconstitutional seizure, and stands in constant jeopardy of being victimized in the future by such seizures, should not be denied the relief that only this Court can now afford because the latest seizure was lifted before this Court has had an opportunity to rule on the issue.

As long as the King-Thompson Act is allowed to stand, the Appellants, all other unions representing public utility employes in Missouri, and the members of such unions, are subjected to the continuing threat of an unconstitutional interference with rights guaranteed by federal law. No valid reason exists to prevent this Court from expunging that threat now and in this case.

CONCLUSION

For all of the reasons set forth above, it is respectfully submitted that the judgment of the Supreme Court of Missouri in this matter should be reversed.

Respectfully submitted,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,
vs.
STATE OF MISSOURI,
Appellee.

On Appeal From the Supreme Court of Missouri.

BRIEF

For Laclede Gas Company, Amicus Curiae.

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Appellee.

On Appeal From the Supreme Court of Missouri.

BRIEF

For Laclede Gas Company, Amicus Curiae.

STATEMENT OF POSITION.

Amicus curiae, pursuant to the consent of the attorneys for the appellants and appellees, files this brief in support of the appellee's position. Argument has been confined to the merits of the controversy although there is a definite possibility that this Court may be justified in finding that this cause is moot under the precedent of **Harris v. Battle**, 348 U. S. 803 (1954). Amicus curiae contends that the National Labor Relations Act of 1947 does not invalidate those sections of the Missouri King-Thompson Act which are in issue in this appeal. This question of pre-emption, in the opinion of amicus curiae, is the crucial issue involved in this case; therefore this brief is confined to that question.

STATUTES INVOLVED.

Sections 295.180 and 295.200 (1) and (6), R. S. Mo. 1949, which are the seizure-no strike provisions of Missouri's King-Thompson Act, § 295.010 et seq., R. S. Mo. 1949, and §§ 7 and 13 of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. § 141 et seq., are the statutes which are primarily involved in this appeal. These statutes are set out or discussed in the argument below.

SUPPLEMENTARY STATEMENT.

A. The Work Stoppage Created An Emergency Which Threatened Public Health, Safety and Welfare in the St. Louis Area.

The consideration of this appeal requires a brief recapitulation of the situation existing in the St. Louis community at the time the Governor of the State seized the facilities of Laclede Gas Company, hereinafter referred to as Laclede, and continuing until Laclede's employees went back to work pursuant to the injunction granted under § 295.200 (6), R. S. Mo. 1949.

Laclede at the time of the strike distributed gas solely in the State of Missouri to some 364,000 customers in the St. Louis area (R. 32), including practically all the hospitals (R. 33). On July 1, 1956, approximately 2200 of Laclede's 2500 employees went on strike (R. 35-36). Since the striking employees included the members of the foreman's union, Local 8-109, there were not sufficient supervisory employees satisfactorily to operate the utility (R. 34). Usually in a ten day period Laclede would receive about one hundred calls a day from customers regarding failure of gas supply. However, from the 1st of July, 1956, to July 11, 1956, some thirteen thousand

calls were recorded complaining of no gas, failure of service, or leaks on the streets (R. 39). By the 11th of July practically all of St. Louis County's more than one half million residents had been denied gas by the closing of valves (R. 43). Water had also been injected into some of the lines serving the City of St. Louis' approximately 800,000 inhabitants (R. 43). This created the danger that the water in traveling to a low spot might temporarily shut off someone's gas, allowing it to go back on unlighted as the water passed the outlet (R. 46). Gas also leaked into the sewer systems creating a danger of explosion, but due to lack of personnel Laclede was unable to handle such developments (R. 49). Bottles containing gas odorant were also broken, creating the fear of gas leaks and increasing the fear of gas explosion (R. 126).

This situation, continuing to grow worse, existed against the backdrop of the following statement of the Vice President of the striking local's international union, made on the day preceding the walk-out.

> "With the attitude being displayed by the company, there is little hope for settlement of the disdisputed issues today. *The Union is preparing for a long strike*" (R. 185) (Emphasis supplied).

The Governor of Missouri, because of this situation, invoked the provisions of § 295.180, R. S. Mo. 1949 (R. 16). He proclaimed in part by Proclamation of the 5th of July, 1956:

> "That the public interest, health and welfare are jeopardized as a result of the treatened interruption of such public utility" (R. 16).

and he issued Executive Order No. 1, stating in part:

> "Now, therefore, I, Phil M. Donnelly, Governor of the State of Missouri, by virtue of the authority vested in me by Chapter 295, and particularly

§ 295.180, of the Revised Statutes of Missouri, 1959, do hereby order as follows:

"I hereby take possession of the plants, equipment, and all facilities of the Laclede Gas Company, located in the State of Missouri, for the use and operation of the State of Missouri in the public interest, effective at four o'clock P. M. Central Standard Time, Thursday, July 5, 1956" (R. 18).

Thereafter the strike continued until, pursuant to an injunction to enforce § 295.200 (1) of the King-Thompson Act, Laclede's employees went back to work on July 14, 1956 (R. 341).

SUMMARY OF ARGUMENT.

I.

The first question in a labor pre-emption case is whether the conduct in question is protected by the National Labor Relations Act of 1935 as amended by the Labor-Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. § 141 et seq. The conduct in this case was the continuation of a strike by employees of a public utility after it had been seized by the Governor of Missouri to protect the public health and welfare in an emergency. Amicus curiae maintains that this conduct did not constitute a "peaceful strike for higher wages," which this Court has defined as a protected right under § 7 of the L. M. R. A., **International Union of U. A. A. v. O'Brien**, 339 U. S. 454, 457 (1951); **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383, 394 (1951). However, even if this conduct did constitute a "peaceful strike for higher wages" and was, therefore, protected by § 7, amicus curiae believes that this protection does not pre-empt the field of labor legislation so as to exclude the seizure-no-strike provisions of Missouri's King Thompson Act, §§ 295.180 and 295.200 (1), R. S. Mo. 1949. This belief is based on the conviction that Congress by protecting certain employee "rights" in § 7 of the L. M. R. A. did intend to pre-empt the area from the state laws which interfere with their exercise except those essential state police measures which are necessary for the preservation of the local public health, safety and welfare from immediate jeopardy.

A. The Missouri seizure-no-strike provisions in question are clearly designed to protect the public health and welfare because they only take effect after the governor makes a specific finding that an emergency exists which jeopardizes the public health and welfare, § 295.180, R. S. Mo. 1949.

Thus it is clear that these provisions are emergency measures to protect the public health and safety, and do not constitute a "comprehensive code for the settlement of labor disputes." If they were the latter, they would be pre-empted under the holding in **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383 at 393. Furthermore, the fact that the seizure-no-strike provisions are limited to public utilities is additional proof that these sections are aimed only at preserving public health and safety. This is because public utilities usually enjoy a monopoly in furnishing the essential services to the community, thus the denial of such services can endanger local health and safety.

B. The labor pre-emption cases show that § 7 of the L. M. R. A. has not been held to bar bona fide state health and safety laws even though they interfere with rights protected by § 7. None of the cases like **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468 (1955), or **International Union of U. A. W. v. O'Brien**, 339 U. S. 454 (1951), which developed the pre-emption doctrine with respect to protected activities, involved a state law designed solely to preserve the public health and safety. This Court in some of these cases, moreover, expressly declined to decide whether the pre-emption doctrine it was evolving extended to state health and safety laws, **Local 24 International Brotherhood of Teamsters v. Oliver**, 358 U. S. 283, 297 (1959); **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383, 393-394. The violence cases, furthermore, which hold that the Taft-Hartley Act does not bar state laws or court action which control violence are based on the principle that Congress did not intend to pre-empt the field from state police measures essential to the preservation of public safety and order, **United Auto Workers v. Wisc. Empl. Rel. Bd.**, 351 U. S. 266 (1956); **Allen-Bradley Local v. Wisc. Empl. Rel. Bd.**, 315 U. S. 740 (1942); and **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131 (1957). This

principle that Congress did not intend to invalidate essential state police laws is just as applicable to conduct protected by § 7 which jeopardizes a state's safety and welfare as it is to violent conduct.

C. By analogy to the quarantine and inspection cases under the commerce clause, Art. I, Sec. 8, U. S. Const., it is clear that the mere fact that an activity is federally protected does not preclude state interference with the activity in order to preserve the public health and safety, **Reid v. Colorado**, 187 U. S. 137 (1902); **Compagnie Francaise de Navigation a Vapeur v. Louisiana State Bd. of Health**, 186 U. S. 380 (1902). Furthermore, the fact that the state is allowed to interfere with a federally protected activity for this limited purpose does not mean that the state can use its general police power to intervene for all purposes, **Buck v. Kuykendall**, 267 U. S. 307 (1925).

D. Congress chose to protect certain employee "rights" in § 7 of the L. M. R. A., and this Court has held that Congress thereby showed an intention to pre-empt that area from most state laws which interfere with § 7 rights, **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 483 (1951). But the use of the word "right" in § 7 also clearly shows that Congress did not intend to pre-empt the field from all state laws which interfere with the protected rights. It has always been understood that all "rights" which involve conduct are subject to limitations by essential police measures which protect public health, safety and welfare, **Jacobson v. Massachusetts**, 197 U. S. 11 (1905). Even the most basic human "rights" are subject to the essential power of the state to protect the public when there is a clear and present danger, **Schenck v. United States**, 249 U. S. 47 (1919). Thus, the word "right" implies that the individual or group is free to engage in the activity in question except when it endangers the public health, safety or welfare. This historic limitation on

all "rights" clearly shows that Congress by protecting certain employee "rights" did not intend to bar the adoption of essential state police measures which preserve the public health, safety or welfare. There are enough historical limitations on the states' ability thus to interfere with an employee right to insure that the essence of the "right" which Congress sought to protect will not be jeopardized, Compare **Thomas v. Collins**, 323 U. S. 516 (1945).

E. The Congressional intent to pre-empt the legislative field to the exclusion of state police measures will only be inferred when there is a compelling congressional direction to that effect, **Savage v. Jones**, 225 U. S. 501 (1912). This rule is especially applicable where the state law is designed to protect the public health or safety, **Maurer v. Hamilton**, 309 U. S. 598 (1940). This basic preemption principle, furthermore, has been accepted by this Court in construing the national labor acts, **Allen-Bradley Local v. Wisc. Empl. Rel. Bd.**, 315 U. S. 740 (1942); **United Auto Workers v. Wisc. Empl. Rel. Bd.**, 351 U. S. 266 (1956). Since the seizure-no-strike provisions of the King-Thompson Act are bona fide health and safety measures, and since there is no compelling congressional direction to deny to the states the right to adopt health and safety laws impinging on the employees' right, it is evident that § 7 of the Taft-Hartley Act does not invalidate the seizure-no-strike provisions of the state law.

F. The legislative history of the Taft-Hartley Act, moreover, does not show any Congressional intent to pre-empt the field of labor management legislation to the total exclusion of state laws which protect the public health and welfare in an emergency. Statements made by individual legislators that seizure and other techniques had been rejected had reference only to the procedure adopted for dealing with national emergencies, not to the permissible

scope of state techniques for dealing with local emergencies which threaten local public health and safety. Since Congress was not concerned with threats to the local health and welfare caused by an emergency, it would be erroneous to assume that it intended to leave the states powerless to meet such threats. Nor does the rejection of Senator Holland's amendment to the new labor law show any Congressional intent to pre-empt the field to the exclusion of bona fide state health and safety laws. This amendment was broadly drawn and designed to overrule completely **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383 (1951). Since the Amalgamated decision did not purport to hold that state emergency legislation to protect health and safety was invalidated, it does not dispose of the issues in the instant case. Therefore, the rejection of this broadly drawn amendment does not show a Congressional intention to invalidate state emergency laws.

The logical conclusion is that § 7 of the L. M. R. A., in protecting the right to strike pre-empts the field from most state legislation which affects that right, but does not exclude state police measures which protect the public health, safety and welfare in an emergency.

II.

The conduct in question has been defined as the continuation of a strike by the employees of a public utility after the governor seized the utility to protect the public health and welfare in an emergency. Obviously, this conduct is not prohibited by the Taft-Hartley Act, and it is the alternative contention of amicus curiae that it is not protected either. If this is correct, the conduct would be neither protected nor prohibited by the national act and, therefore, would be subject to state regulation under the doctrine of **International Union, U. A. W. v. Wisc. Empl. Rel. Bd.**, 336 U. S. 245 (1949).

A. The conduct in question was not protected because it ceased being "peaceful" after the governor had taken possession of the utility in an emergency to protect the public health and welfare. The conduct was no longer constituted a "peaceful strike for higher wages", defined as a protected activity under § 7 in **International Union of U. A. W. v. O'Brien,** 339 U. S. 454, 457 (1951). The state seizure in effect declared that after the state had taken possession the strike ceased to be "peaceful" because there was an existing emergency threatening the public. Since the strike was no longer "peaceful", it was not conduct which was protected by § 7, and the state was free to regulate this unprotected conduct.

For these reasons it is concluded that the seizure-no-strike provisions of Missouri's King-Thompson Act are not excluded by the Labor-Management Relations Act of 1947.

ARGUMENT.

I. The Exercise of Protected Activities Under § 7 of the L. M. R. A. Is Subject to State Police Regulations Which Protect Public Health and Safety in An Emergency.

Mr. Justice Harlan pointed out in his concurring opinion in the recent case of **San Diego Bldg. Trades Council v. Garmon,** 359 U. S. 236 (1959), that the first question in a labor pre-emption case is whether the conduct in question is protected by the Labor Management Relations Act of 1947. The conduct involved in this case was a continuation of a strike by the employees of a public utility after the Governor of Missouri had seized the utility for the use and operation of the State to protect the public health and welfare in an emergency caused by the interruption of natural gas service in the St. Louis area. Prior decisions have held that § 7, and perhaps to a lesser extent § 13,[1] of the L. M. R. A. protect the "right" to engage in "peaceful strikes for higher wages," and that state laws which interfere with this right are invalid since they invade a pre-empted area, **International Union of U. A. W. v. O'Brien,** 339 U. S. 454, 457 (1951); **Amalgamated Association v. Wisc. Empl. Rel. Bd.,** 340 U. S. 383, 394 (1951).

Amicus curiae contends that the appellants' conduct was not protected because the strike was not "peaceful" after

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[1] § 13 of the L. M. R. A. provides in part that . . . "Nothing in this Act, . . . shall be construed to interfere with . . . the right to strike . . ." This was obviously enacted as a rule of internal construction for the Taft-Hartley Act itself and does not in any way purport to create or protect the right to strike. This construction of § 13 was expressly adopted by this Court in *International Union v. Wisc. Empl. Rel. Bd.*, 336 U. S. 245, 258-259 (1949). For this reason § 13 has not been specifically discussed in many portions of this brief which deal with rights protected by § 7. However, if § 13 should be construed as more than a rule of internal construction, then the argument concerning § 7 would be equally applicable to § 13.

the proclamation of an emergency and seizure of the public utility. However, even if the appellants' conduct is found to be protected under § 7, it is contended that this alone is not enough to invalidate state police measures designed to protect the public health, safety and welfare in an emergency, although protection by § 7 may invalidate other state laws which interfere with a protected activity. Therefore, for the first portion of this brief it will be assumed, for the sake of argument only, that the conduct of the appellants in this case is protected by § 7 of the L. M. R. A.

A. §§ 295.180 and 295.200 (1), R. S. Mo., Are Emergency Measures of the Missouri Legislature Pursuant to Its Police Power to Preserve Public Health and Welfare.

Section 295.180, R. S. Mo. 1949, insofar as pertinent provides:

> (1) ". . . should either party in a labor dispute between a utility and its employees . . . engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, . . . then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the State of Missouri in the public interest."
>
> (2) "Such power and authority may be exercised by the governor through such department or agency of the government as he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, *and that the public interest, health and welfare are jeopardized, and that the*

exercise of such authority is necessary to insure the operation of such public utility." (Emphasis supplied.)

After seizure, § 295.200 (1), R. S. Mo. 1949, provides that it shall be unlawful for any employee to call, incite, support or participate in any strike or concerted refusal to work as a means of enforcing any demand against the utility, and § 295.200 (6), R. S. Mo. 1949, provides that the courts of the state shall have the power to enforce this provision by injunction or other legal or equitable means.

The Supreme Court of Missouri upheld these seizure-no strike provisions of the King-Thompson Act, and in so doing limited its opinion to these two sections of the Act, **State v. Local 8-6**, R. 338, 317 S. W. (2d) 309 (1958). It stated, R. at 344, 317 S. W. 2d at 316:

> "The parts of the Act directly involved are Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 290.200, R. S. Mo., making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means. Under established principles, we will restrict our consideration to those sections directly involved."

Only the validity of these two sections are thus involved in this appeal. As stated in **Allen-Bradley Local v. Wisc. Empl. Rel. Bd.**, 315 U. S .740 at 747 (1941):

> ". . . we confine our discussion to the precise facts of this case and intimate no opinion as to the validity of other types of orders. . . ."

See also **State ex rel. Board of Mediation v. Pigg**, 244 S. W. (2d) 75 (1951), holding that the other provisions of the King-Thompson Act are separable from the seizure-no strike provisions.

The validity of these sections of the King-Thompson Act rests upon the police power of the state. States have always

exercised an extensive control over public utilities, even though the utilities are engaged in interstate commerce. They set their rates, grant their charters, grant them monopolies and otherwise control their existence to a degree unpermitted as to other industries in interstate commerce. The reason is that public utilities provide services of such immediate concern to everyone in the community.

The validity of §§ 295.180 and 295.200 (1) and (6), does not, however, rest solely on the general police power of the state over public utilities. These sections, as indicated by their requirement for a definite finding that the public health and welfare be jeopardized, rest primarily on the accepted police power of a state to protect the public health, safety and welfare in emergencies. In **Cantwell v. Connecticut,** 310 U. S. 296 (1940), it was stated that a state police regulation restricting freedom of religion could not be tolerated except (l. c. at 308):

> "*When clear, and present danger* of riot, disorder, interference with traffic upon the public streets, or other *immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious.*" (Emphasis supplied.)

Sections 295.180 and 295.200 (1) are clearly designed to be and can only be resorted to when there is "an immediate threat to public safety, peace, or order," **Cantwell v. Connecticut,** supra. The Supreme Court of Missouri stated below (R. 345, 317 S. W. [2d] at 316):

> "Section 295.180 authorized the governor to take possession of the utility property for the use and operation of the state of Missouri *only* when the parties to the labor dispute engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in failure to continue the operation of the public utility, and threatens the public interest, health and welfare."

The public interest, health and welfare were threatened in this case. The Governor of the State of Missouri so found and the facts confirm that finding.

The fact that the seizure-no-strike provisions of the King-Thompson Act, in addition to requiring the finding of an emergency, are also limited to public utilities clearly indicates that they are emergency legislation to protect the public health and welfare, and not a veiled attempt to regulate collective bargaining protected by § 7 of the Taft-Hartley Act. Public utilities have traditionally provided products like natural gas which are "life essentials" of the people, § 295.010, R. S. Mo. 1949. Certainly it is beyond dispute that the services provided by public utilities are essential to "the decent life of a modern community," Mr. Justice Frankfurter dissenting in **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383 at 404. Added to the essential nature of public utility services is the fact that local public utilities enjoy monopolistic franchises granted by the state. This monopoly, which the states are free to grant because of their inherent police authority over public utilities, insures that the utility shall be free from competition, and it also prevents the public from turning elsewhere when the utility's services are interrupted. This combination of the essential nature of public utility services and their freedom from competitive substitutes creates a unique situation which potentially threatens the public health and safety when the service is denied. Thus by limiting the King-Thompson Act to public utilities it is clear that the Missouri legislature was attempting only to protect the public health and safety and not to regulate labor relations.

When this limitation of the King-Thompson Act to public utilities is combined with the requirement that the governor specifically find that the "health and welfare" of the public is actually in jeopardy, it is abundantly clear that

the Missouri Supreme Court was amply justified in finding that the purpose of the Act was to preserve the public health and welfare in an emergency (R. 344, 317 S. W. 2d at 316):

> "The dominant purpose of the King-Thompson Act is the protection of th welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state."

B. The Labor Pre-emption Cases Show That State Police Measures Designed to Protect Public Health, Safety and Welfare Are Not Invalidated by § 7 of the L. M. R. A.

The Taft-Hartley Act does not explicitly exclude state jurisdiction over the rights it protects. Its most important "rights" provision, § 7 of the L. M. R. A., merely provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . :"

This Court, however, beginning with **Hill v. Florida**, 325 U. S. 538 (1945), has on several occasions struck down state legislation deemed to infringe upon an employee "right" protected by labor-management legislation. In **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383, 394 (1951), and **International Union of U. A. A. v. O'Brien**, 339 U. S. 454, 457 (1951), this Court further stated that "peaceful strikes for higher wages" constituted a protected activity under the Taft-Hartley Act and struck down the state statute in each case which interfered with the exercise of this right. None of the cases, however, holding that state laws may not interfere with the exercise of

a § 7 right involved state public health and safety measures, **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, supra; **International Union of U. A. A. v. O'Brien**, supra; **Hill v. Florida**, 325 U. S. 538 (1945); **Bethlehem Steel Co. v. New York Labor Relations Board**, 330 U. S. 767 (1947); **Plankington Packing Co. v. Wisconsin Empl. Rel. Bd.**, 338 U. S. 953 (1950); **La Crosse Telephone Corp. v. Wisconsin Empl. Rel. Bd.**, 336 U. S. 18 (1949); **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468 (1955). In the **Amalgamated** case, moreover, and in several more recent cases this Court has specifically refused to decide whether state statutes which are designed to preserve public health and safety would also be struck down. Thus, in **International Brotherhood of Teamsters v. Oliver**, 358 U. S. 283 (1959), which held that a state anti-trust law could not invalidate a protected clause in a collective bargaining agreement, Mr. Justice Brennan was careful to state (358 U. S. at 297):

> "'. . . Congress has sufficiently expressed its purpose to . . . exclude state prohibition, even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade.' Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 481. *We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation;* the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce." (Emphasis supplied.)

This question was very carefully reserved in the **Amalgamated** case itself, upon which appellants rely almost exclusively to establish their case. The Wisconsin legislation involved therein was not a health and safety regulation, but rather "a comprehensive code for the settlement of labor disputes." 340 U. S. at 393. The care taken

in the **Amalgamated** decision to point out that the Wisconsin statute was not "emergency" legislation emphasized that consideration of whether § 7 pre-empted state legislation designed to protect health and safety had been deferred (340 U. S. at 393-394):

> "Respondents rely upon that action as showing a congressional intent to carve out a separate field of 'emergency' labor disputes and, pointing to the fact that Congress acted only in respect to 'national emergencies,' respondents ask us to hold that Congress intended, by silence, to leave the states free to regulate 'local emergency' disputes. *However, the Wisconsin Act before us is not 'emergency' legislation but a comprehensive code for the settlement of labor disputes between public-utility employers and employees.* Far from being limited to 'local emergencies,' the act has been applied to disputes national in scope, *and application of the act does not require the existence of an 'emergency.'*"[1] (Emphasis supplied.)

This reference in the Amalgamated opinion was not inadvertent, for in the earlier part of the decision Chief Justice Vinson, in describing the Wisconsin statute, was careful to point out that its purpose was to regulate labor relations, not to protect the public health and safety (340 U. S. at 388):

> "In summary, the act substitutes arbitration upon order of the Board for collective bargaining when-

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[1] Appellants at page 25 of their brief read this language as proof that this Court . . . "*rejected* the contention 'that Congress intended, by silence, to leave the states free to regulate "local emergency" disputes.'" (Emphasis supplied.) As we read this language it seems that this Court instead of rejecting this contention held that it was not in issue and refused to decide whether "local emergency" legislation designed to protect the public health and safety was pre-empted because the Wisconsin statute was not "emergency" legislation.

ever an impasse is reached in the bargaining process. *And, to insure conformity with the statutory scheme, Wisconsin denies to utility employees the right to strike.*" (Emphasis supplied.)

The only conclusion which can be drawn from this refusal to decide whether state health and safety laws are invalidated is that the mere protection of an activity by § 7 does not show a congressional intent to immunize that activity from local health and safety rules.

Although the question of whether a state health and welfare measure must bow to a federally protected right has been reserved by this Court, the violence cases have uniformly held that the Taft-Hartley Act was not intended to pre-empt the entire field so as to impair the states' ability to preserve public safety and order. Admittedly none of the conduct which the states were allowed to regulate in the violence cases was, strictly speaking, protected by § 7. The basic principle relied on in these cases, however, was that state police power is not forbidden to deal with threats to the public health, safety and peace.

This principle was very clearly presented by this Court in **United Auto Workers v. Wisconsin Empl. Rel. Bd.**, 351 U. S. 266, 274 (1956). In that case the Wisconsin labor board, acting under the Wisconsin Employment Peace Act, had enjoined mass picketing, interference with free and uninterrupted use of public ways, coercion of those who desired to work, and threats of physical injury. This Court first found that the activities which had been enjoined were also "unfair labor practices" under § 8 (b) (1) of the Taft-Hartley Act. It might have seemed, if this were so, that Wisconsin would have been ousted of jurisdiction just as the states were in **Garner v. Teamsters C. & H. Local Union**, 346 U. S. 485 (1954), **and Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468 (1956), because in all

three cases the Taft-Hartley Act provided a remedy for the conduct which the state sought to enjoin as an "unfair labor practice." This Court, however, in effect distinguished the two prior cases by emphasizing that this case involved the state police power's inherent ability to preserve the public peace by controlling violence (351 U. S. at 272):

> "*It seems obvious that Sec. 8 (b) (1) was not to be the exclusive method of controlling violence even against employees*, much less violence interfering with others approaching an area where a strike was in progress. No one suggests that such violence is beyond state criminal power. *The Act does not have such regulatory pervasiveness. The state interest in law and order precludes such interpretation.*" (Emphasis supplied.)

See also **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740 (1942); **United Const. Workers v. Laburnum Const. Corp.**, 347 U. S. 656 (1954); and **Youndahl v. Rainfair, Inc.**, 355 U. S. 131 (1957) (where this Court held that conduct which threatened to develop into, or to provoke violence was subject to state injunctive power.)

The opinion in the **United Auto Workers** case also furnishes the rationale for the retained state police power over violence. Control over violence is left to the states because they are the guardians of local peace and order. Guardianship over local peace and order includes jurisdiction to control local emergencies (351 U. S. at 274):

> "The dominant interest of the State in preventing violence and property damage can not be questioned. It is a matter of genuine local concern."

And (l. c. 274-275):

> "The States are the natural guardians of the public against violence. *It is the local communities that suffer*

most from the fear and loss occasioned by coercion and destruction. We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect." (Emphasis supplied.)

Certainly, in the Laclede strike of 1956 it was the St. Louis community which suffered. It was not a national emergency, but it was a local emergency. An increasing portion of the inhabitants of St. Louis were totally without gas; destruction of lives and property were real possibilities. In this situation the Governor of Missouri found a local emergency, declared the same, and acted pursuant to the state act requiring the existence of a local emergency for its application. Surely, §§ 295.180 and 295.200 (1) and (6), are enactments of the Missouri legislature pursuant to its police power to preserve local peace and order and as such must stand just as did the state action in the violence cases.

C. The Inspection and Quarantine Cases Under the Commerce Clause Show That State Health and Safety Regulations May Validly Interfere With Federally Protected Activities.

By analogy to the inspection and quarantine cases under the commerce clause, Art. I, § 8, U. S. Const., it is clear that an activity is not exempted from the states' inherent power to preserve public health and safety merely because it is federally protected. Such laws in the interest of public health and safety may absolutely exclude certain products or articles from interstate commerce, **Morgan's Steamship Co. v. Louisiana Board of Health**, 118 U. S. 455 (1886), (upholding a state law requiring all ships to pass a sanitary inspection before admission to the state's ports); **Asbell v. Kansas**, 209 U. S. 251 (1908), (upholding a state law excluding all cattle that had not been certified to be

free of certain diseases); **Reid v. Colorado**, 187 U. S. 137 (1902), (upholding a state law excluding diseased cattle).

This power to exclude injurious products is based on the state's inherent power to protect public health and safety, not on the theory that diseased or contaminated products are not legitimate articles of commerce. See, **Compagnie Francaise de Navigation a Vapeur v. Louisiana State Bd. of Health**, 186 U. S. 380 (1902), where it was held that the state had the power to prohibit healthy persons from entering diseased areas of the state. Of course common sense necessitates this result, yet the plain policy of the commerce clause prohibits all state control over the question of which products are legitimate items of interstate commerce, **Leisy v. Hardin**, 135 U. S. 100 (1890), (holding that a state could not exclude alcoholic beverages because of its notion of a sound social policy). Thus, when the public health and safety is endangered, it is clear that a state can absolutely exclude certain products even though it interferes with the free flow of goods which the commerce clause protects. Of course the state cannot misuse this power, and the courts are always open to determine whether a particular state law is really a bona fide health and safety measure, or a veiled attempt to regulate commerce, **Hannibal & St. J. R. Co. v. Husen**, 95 U. S. 465 (1878); **Minnesota v. Barber**, 136 U. S. 313 (1890).

In the present case this Court is asked to construe § 7 of the L. M. R. A., which merely protects the right to strike in the same way that the commerce clause protects the free flow of goods in interstate commerce, as invalidating an emergency state law which protects public health and safety. In **Asbell v. Kansas**, 209 U. S. 251, at 256 (1908), it was pointed out that the mere fact that an article is part of the protected flow of interstate commerce does not exempt it from state health regulations:

"These general principles control the decision of the case at bar. Cattle, while in the course of transportation from one state to another, *and in that respect under the exclusive control of the law of the national government, may, at the same time, be the conveyance by which disease is brought within the State to which they are destined, and in that respect subject to the power of the State, exercised in good faith to protect the health of its own animals and its own people.*" (Emphasis supplied.)

Certainly the fact that Congress, instead of the Constitution, grants the protection is not a rational ground for concluding that the mere extension of protection excludes the bona fide exercise of state health and safety measures.

The quarantine cases also illustrate that state interference with a federally protected activity will often be permitted when it is designed to protect the public health, safety or welfare, whereas it will not be tolerated when the state law is a general police regulation based on the economic policy of the state legislature. This vital distinction was pointed out in **Buck v. Kuykendall**, 267 U. S. 307 (1925), in the following language (l. c. at 315):

"It may be assumed that § 4 of the state statute is consistent with the Fourteenth Amendment; and also, that appropriate state regulations, adopted primarily to promote safety upon highways and conservation in their use, are not obnoxious to the Commerce Clause, where the indirect burden imposed upon interstate commerce is not unreasonable. * * * The provision here in question is of a different character. *Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition.*" (Emphasis supplied.)

This analogy demonstrates that a great deal more interference with a federally protected activity will be allowed when the state law is a measure to protect public health, safety or welfare rather than a general economic or labor regulation under its police power. This fact is significant because the seizure-no-strike provisions of the King-Thompson Act are designed to protect the public health, safety and welfare in an emergency rather than to regulate the labor affairs of the community as the state statutes did in cases such as **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383 (1951); and **Hill v. Florida**, 325 U. S. 538 (1945).

D. The Right to Strike, Like Other Rights, Is Not Absolute But Is Subject to State Regulation for the Protection of Public Health and Safety.

The basic question in all pre-emption cases is whether Congress intended the federal statute in question to pre-empt the entire field so completely as to exclude all state law applicable to the subject. This intent of course can be gathered from many sources, but one of the basic sources is still the Congressional choice of language in the statute, **United States v. American Trucking Association, Inc.**, 310 U. S. 534, 543 (1940). It is normally understood that a word used in a statute should be given its usual and accepted connotation unless a contrary intent is evidenced by the legislature. In § 7 of the L. M. R. A. Congress provided that "Employees shall have the *right* to . . . engage in other concerted activities for the purpose of collective bargaining." (Emphasis supplied.)

Congress by selecting the word "right" in § 7 chose a word with many connotations, but there is one universally understood limitation attached to the word, and this is that a "right" which involves conduct is never absolute but "remains subject to regulation for the protection of society," **Cantwell v. Connecticut**, 310 U. S. 296, 304 (1940).

Thus it is an elementary principle of law that even the most basic rights, such as freedom of speech, are subject to some limitation by the police power in the interest of public health, safety and welfare, **Gitlow v. New York**, 268 U. S. 652 (1925); **Whitney v. California**, 274 U. S. 357 (1927). As Justice Holmes put it with characteristic clarity, no one has the right to shout fire in a crowded theater, **Schenck v. United States**, 249 U. S. 47, 52 (1919).

This principle that rights are not absolute is especially cogent when the public health or safety is threatened. Many severe restraints will be tolerated in such cases. This Court in **Jacobson v. Massachusetts**, 197 U. S. 11 (1905), while sustaining compulsory vaccination in the interest of the public health, stated this basic principle in the following language (197 U. S. at 26):

> "But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others."

Likewise in the interest of public health this Court has sustained the severe restraint of sterilization, **Buck v. Bell**, 274 U. S. 200 (1927).

These are striking illustrations of the principle that the most basic human rights are subject to the states' essential

power to protect the public health, safety and welfare. These cases have nothing to do with the pre-emption doctrine as such, but they do illustrate the commonly understood limitations on the word "right" which Congress chose to use in § 7 of the Taft-Hartley Act. Since Congress must be presumed to have been aware of these common limitations on all "rights", it is rather difficult to see how it can be argued that Congress by protecting the "right" to strike in § 7 of the Taft-Hartley Act intended to deny to the states their power to control the exercise of this "right" in order to protect public health, safety and welfare in an emergency.

The Congressional choice of the word "right" rationally explains why this case, which involves emergency legislation designed to protect local public health and safety when they are jeopardized, differs from the prior cases such as **Amalgamated** and **O'Brien** which held that general state laws which interfere with "rights" protected by § 7 are invalidated. The difference is simply that the word "right" implies that the individual shall be free to engage in the activity in question except when it endangers the public health, safety or welfare. Therefore, it follows that Congress by using the word "right" in § 7 may have manifested an intention to preclude all state laws which limit or restrict the exercise of the "right", but not those emergency state police laws which protect public health, safety and welfare, since all "rights" are historically subject to these measures.

This Court has recognized that the "right" to strike which is now protected by § 7 is not absolute. Thus in **Southern S. S. Co. v. N. L. R. B.**, 316 U. S. 31 (1942), it was held that there was no right to strike in violation of the federal mutiny law. In **International Union v. Wisc. Empl. Rel. Bd.**, 336 U. S. 245 (1949), this Court used language which implied not only that the right to strike is

not absolute, but also that its exercise is subject to state law (l. c. at 259):

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act."

The holdings in the **Amalgamated** and **O'Brien** cases make it clear, however, that it is incorrect to infer from the foregoing language that general state police laws which interfere with the right to strike will be sustained. These holdings, nevertheless, do not effect the recognition of the basic principle that the right to strike is not absolutely immune from all state laws. The recognition of this principle in the **International Union** case and the holdings in the **Amalgamated** and **O'Brien** cases can be reconciled in this case by the holding that Congress intended to preempt the field so as to bar all state laws which interfere with the right to strike except those which protect the public health and safety.

It would be perilous to ascribe an intent to Congress to invalidate state laws protecting the public in emergencies in the absence of any federal provision to protect the public in lieu of the state law. Finding such a Congressional intent would be tantamount to saying that Congress intended to make the "right" to strike more absolute than the basic human rights of freedom of speech and press. The cases above like **Gitlow v. New York**, 268 U. S. 652 (1925), and **Whitney v. California**, 274 U. S. 357 (1927), show that these basic human rights are subject to state police regulations which are designed to protect the public, yet the appellants are asking this Court to hold that Con-

gress, without taking any steps of its own to protect the public in local emergencies, intended to create a "right" to strike absolutely immune from the states' power to protect the public health, safety and welfare. Such an interpretation would not only ignore the historic limitations of the word "right", but would also ascribe to the Congress of the United States a callous disregard for the public health and safety of the citizens of the individual states. For these reasons it is abundantly clear that Congress in protecting the "right . . . to engage in concerted activities for the purpose of collective bargaining" did not intend to invalidate state police measures designed to protect the public in an emergency.

The recognition that the Taft-Hartley Act does not through pre-emption bar the exercise of emergency state police powers to protect public welfare, though such exercise does in fact impinge upon the right to strike, need not open the way to indiscriminate state encroachment upon the rights protected by the Taft-Hartley Act. Although it would not in this brief be proper to attempt a detailed exploration of the permissible limits on the states' exercise of their police power in areas protected by the Taft-Hartley Act, the cases dealing with the basic human "rights" show that there are very real limitations upon the competence of the police power in areas subject to federal control. Limitations applied in the same spirit in the labor pre-emption field would be a completely effective check on the states' ability through the use of their police power to interfere with the substantive "rights" protected by § 7. As pointed out above in the commerce clause cases, the first limitation is always whether the state law is a real police measure designed to protect health and safety, or whether it is a mere sham to hide a state regulatory measure, **Hannibal & St. J. R. Co. v. Husen**, 95 U. S. 465 (1878). The sections of the King-Thompson Act here involved are clearly bona fide health and safety regu-

lations because they are limited to public utilities which have monopolistic control over services essential to the public health and welfare and because they require the existence and declaration of an actual emergency before their provisions here involved can be invoked.

The human "rights" cases, moreover, show that there are more affirmative limitations on police regulations of the basic freedoms than this type of test of bona fides. Thus, by way of illustration, general licensing requirements which tend to create a prior restraint on the exercise of a freedom protected by the Fourteenth and First Amendments are held to be invalid even though they are enacted under the states' police power. **Thomas v. Collins,** 323 U. S. 516 (1945) (free speech); **De Jonge v. Oregon,** 299 U. S. 353 (1937) (peaceful assembly); **Cantwell v. Connecticut,** 310 U. S. 296 (1940) (religion). The first of these cases used the following language to describe the only occasion upon which the police power would be justified in imposing a prior restraint on the exercise of these freedoms (323 U. S. at 530):

> "These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, *must have clear support in public danger, actual or impending.* Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." (Emphasis supplied.)

These cases which illustrate the very limited occasion—immediate threat to the public health, safety or order—when the state is justified in imposing a prior restraint on the exercise of some of the basic individual freedoms are instructive of another difference between the King-Thompson Act and the Wisconsin Act which this Court struck down in the **Amalgamated** case. The Wisconsin statute imposed a prior and absolute restraint on the "right" to

strike in the public utility industry. On the other hand, the sections of the King-Thompson Act here involved do not impose any such prior restraint on the "right" to strike, but only prohibit the strike after the governor has found that the public health and welfare are in jeopardy, and after the seizure to the use of the state, §§ 295.180, 295.200 (1), R. S. Mo. 1949. The governor's finding that there is an immediate threat to the public health and welfare is precisely the situation which justifies police interference with the rights protected by § 7. Compare, **Thomas v. Collins**, 323 U. S. 516 (1945).

Further illustration of the potential limits on the states' power to interfere with protected rights would be superfluous. These analogies demonstrate that there are enough potential limitations on this power so that state laws which protect the public in an emergency can safely be allowed to restrict the exercise of a § 7 "right" without in any way jeopardizing the essence of the "right", to strike which Congress has protected. For these reasons it is obvious that Congress by selecting the word "right" in § 7 of the L. M. R. A. clearly showed that it did not intend to exclude the exercise of the police power of the states to protect the public health, safety and welfare in emergencies.

E. The Doctrine of Federal Pre-emption Does Not Apply to a State Police Measure Which Protects Public Health and Safety Unless There Is a Compelling Congressional Direction to That Effect.

In attempting to maintain the delicate balance between legitimate state and federal interests this Court has consistently followed the principle that a federal statute will not be construed as precluding a valid state regulation under its police power unless the Congressional intent to replace the state law is unquestionably demonstrated, **Reid v. Colorado**, 187 U. S. 137, 148 (1902); **Mintz v. Baldwin**,

289 U. S. 346, 350 (1933); **Kelly v. Washington**, 302 U. S. 1, 13 (1937); **Savage v. Jones**, 225 U. S. 501, 533 (1912); and other cases collected in Mr. Justice Frankfurter's dissent in **Hill v. Florida**, 325 U. S. 538, 549-552 (1945).

This principle that state police measures are not superseded unless it is obvious that Congress intended that result is often expressed without differentiation as to the particular reason for the exercise of the states' police power. There have, however, been occasions where this Court has had opportunities to point out that the Congressional intent to supersede state health and safety regulations must be even more clearly demonstrated than the intent to supersede just any state police measure.

Illustrative of this more strict application of the rule is the case of **Maurer v. Hamilton**, 309 U. S. 598 (1940), where this Court held that the Motor Carrier Act of 1935 did not preclude by pre-emption the operation of a Pennsylvania statute prohibiting motor carriers from hauling cars on the top of their truck cabs because the practice was dangerous on the steep grades of the Pennsylvania highways. The court reached this result by applying the rule that a state safety regulation should be pre-empted only when no other interpretation of the federal statute was possible (309 U. S. at 614):

> "As a matter of statutory construction congressional intention to displace local laws in the exercise of the commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. *This is especially the case when public safety and health are concerned.*" (Emphasis supplied.)

Since the King-Thompson Act is a police measure to protect public health, safety and welfare in an emergency, and since the L. M. R. A. does not show an unequivocable

Congressional intent to replace these local laws, it follows that this case fits within the usual rule that a state police regulation for the protection of the public will not be deemed invalidated by pre-emption unless the Federal statute permits of no other construction. This Court has applied this principle to the Taft-Hartley Act in the violence cases, discussed above, by holding that act not to have so pre-empted the field as to deny validity to state laws or court action designed to protect the public by curbing violence, there being no compelling Congressional direction to this effect, **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740 (1942); **United Auto Workers v. Wisconsin Empl. Rel. Bd.**, 351 U. S. 266 (1956). The difficulty, of course, is in establishing that this cohesive principle of law applies to state laws which protect health and safety by preserving essential utility services in emergencies as well as those which protect health and safety by curbing violence. The landmark pre-emption cases cited above dispel this difficulty by showing that the important correlation in deciding whether Congress intended to preclude a given state law is whether such law is a bona fide health, safety or welfare measure, not whether it acts on work stoppages in vital public utilities imperiling the public safety and welfare instead of on violence.

F. The Legislative History of the L. M. R. A. Shows That Congress Did Not Intend to Deny to the States Authority to Enact State Emergency Legislation Protecting Public Health, Safety and Welfare Even Though Such State Legislation Impinges Upon Protected Activities.

There has been no "compelling directions" from Congress "to leave [the states] powerless to avert • • • emergencies". **United Auto Workers v. Wis. Empl. Rel. Bd.**, 351 U. S. 266, at 275 (1956). "[A]n 'intention of Con-

gress to exclude states from exercising their police power must be clearly manifested'," **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 749, at 749. (1942).

Congress did not consider the local emergency situation in its debates preceding the passage of the Taft-Hartley Act. Nowhere in the reports of the debates in the Congressional Record can mention of local emergencies be found. This fact alone, since a Congressional intent to exclude a state's exercise of its police powers must be clearly manifested, should be sufficient to show that the states' police powers to preserve local health and safety by action aimed only at local emergencies has not been destroyed by passage of the Taft-Hartley Act.

Title II of the Taft-Hartley Act additionally shows, however, that Congress contemplated that the right to strike could and would be curtailed where a strike created an emergency. Section 178 of the Act provides that the Government may obtain an injunction for eighty days against a strike or lockout which, "if permitted to occur or to continue, will imperil the national health or safety". After expiration of the period of the injunction, according to Senator Taft (93 Cong. Rec. 3835, 1947):

> "If there finally develops a complete national emergency threatening the safety and health of the people of the United States, Congress can pass an emergency law to cover the particular emergency."

This limitation on the right to strike was recognized and accepted despite Congressional allegiance to the concept of free collective bargaining as expressed by Senator Taft, who said (93 Cong. Rec. 3835, 1947):

> "Basically, I believe that the committee feels, almost unanimously, that the solution of our labor

> problems must rest on a free economy and on free collective bargaining. * * * We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right."

Only naturally the discussion of the problem of strikes or lockouts creating emergencies was limited to those strikes creating national emergencies. The Senate Report on the bill which became the Taft-Hartley Act, S. Rep. No. 105, 80th Cong. 1st Sess., at page 14 states:

> "While the committee is of the opinion that in most labor disputes the role of the Federal Government should be limited to mediation, we recognize that the repercussions from stoppages in certain industries are occasionally so grave that the national health and safety is imperilled. An example is the recent coal strike. . . ."

Congress thus had in mind the crippling post World War II national strikes. Naturally Congress was only concerned with the "role of the Federal Government" in these strikes. As stated in the Senate Report, l. c. at 14, "only in national emergencies . . . should the Federal Government be armed with power" to enjoin.

Is it not a reasonable inference from the Senate Report that Congress did not consider the local emergency because the local emergency is the concern of the state rather than the national government? The fact, furthermore, that Congress rejected seizure for national emergencies does not mean that such procedure was rejected for the states in local emergencies. Different considerations are involved in the two different types of emergencies. Because seizure might not be appropriate for a national emergency does not mean it is also inappropriate for local emergencies. The legislative history of the Taft-Hartley Act thus does

not reveal a Congressional intention to destroy state police power over local emergencies.

Counsel for appellants would have us believe, however, that in some way the defeat of Senator Holland's amendment to the Labor Management Reporting and Disclosure Act of 1959, Public Law 86-251, and the passage of that part of the Act having to do with the National Labor Relations Board's jurisdiction should affect this Court's construction of the Taft-Hartley Act. The amendment proposed by Senator Holland insofar as pertinent provided (105 Cong. Rec. 6037, 1959):

> "Nothing in this Act or the Labor-Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulate or qualify the right of employees of a public utility to strike, or which prohibit strikes by such employees."

The amendment was obviously designed, as Senator Holland pointed out, to overrule the **Amalgamated** decision in its fullest scope.[1] This is exactly why the amendment's rejection has no bearing on the present case. The instant case presents a question with which neither the **Amalgamated** decision nor the amendment to overrule it was concerned. The amendment would have overruled the **Amalgamated** decision, which held that general state laws

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[1] The appellants, at page 27 of their brief, rely on Senator Holland's interpretation of the *Amalgamated* decision to show that the states were left without "any power at all . . . . to keep their utilities running" (105 Cong. Rec. 6037, 1959). Whatever value his amendment may have in showing Congressional intent, it is clear that Senator Holland's remarks have no effect at all as an authoritative interpretation of the *Amalgamated* case which is the province of this court. Since it is clear that the *Amalgamated* decision does not preclude "emergency" state action to protect health and safety, the amendment proposed by Senator Holland was too broadly drawn.

aimed at regulating labor relations in public utilities are by pre-emption forbidden to interfere with the right to strike. The amendment would of course have allowed the states to regulate labor relations, and thereby substitute their judgment for the process of collective bargaining selected by Congress. The rejection of this broadly drawn amendment, therefore, in no way shows that Congress now feels that the exercise of a § 7 "right" is immune from state health and safety laws.

The Reporting and Disclosure Act, furthermore, concerned union reform and the National Labor Relation Board's jurisdiction, matters not even remotely involved in this action. Senator Holland's unrelated amendment was introduced in the heat of debate on the primary features of the proposed legislation and was furt. r offered without benefit of a committee hearing or report. It was defeated in a body, many of whose members, including Senator Kennedy who spoke against the Holland amendment, were not even in the Senate at the time of Taft-Hartley's passage.

This Court in **United States v. United Mine Workers of America**, 330 U. S. 258 (1946), had a like argument as to the effect of subsequent legislation presented to it. It was urged that the statements of certain Senators made in the debate on the War Labor Disputes Act should be determinative that Congress concurred in a judicial construction of the Norris-LaGuardia Act, passed some eleven years earlier. This Court stated (l. c. at 281-282):

> "We have considered these opinions, but cannot accept them as authoritative guides to the construction of the Norris-LaGuardia Act. They were expressed by Senators, some of whom were not members of the Senate in 1932, and none of whom was on the Senate Judiciary Committee which reported the bill. They were expressed eleven years after the Act was passed

and cannot be accorded even the same weight as if made by the same individuals in the course of the Norris-LaGuardia debates. Moreover, these opinions were given by individuals striving to write legislation from the floor of the Senate and working without benefit of hearings and committee reports on the issues crucial to us here. *We fail to see how the remarks of these Senators in 1947 can serve to change the legislative intent of Congress expressed in 1932* and we accordingly adhere to our conclusion that the Norris-LaGuardia Act did not affect the jurisdiction of the courts to issue injunctions when sought by the United States in a labor dispute with its own employees." (Emphasis supplied.)

The legislative history of the Taft-Hartley Act thus shows no Congressional intention to pre-empt the legislative field so as to invalidate state police regulations designed to protect the public health and safety in an emergency.

II.

A Public Utility Strike Which Creates an Emergency That Threatens the Public Health and Safety Is Neither Protected Nor Prohibited by the Taft-Hartley Act; Hence the State Is Free to Regulate It.

In the first portion of this brief it has been assumed, for the sake of argument, that the conduct of the appellants in this case constituted a "peaceful strike for higher wages"; conduct which this court has held is a protected activity under §§ 7 or 13 of the L. M. R. A., **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383, 394 (1951); **International Union of U. A. W. v. O'Brien**, 339 U. S. 454, 457 (1950). This assumption was made, however, only to facilitate the argument that Congress by pro-

tecting a "right" under §§ 7 and 13 did not intend to preclude by pre-emption state police measures which restrict that "right" in order to protect the public health, safety and welfare in an emergency. That view affords a sound basis for affirming this decision. It is believed, however, that it is equally true that a strike which creates a local emergency that threatens the public health and safety is "neither protected nor prohibited" by the L. M. R. A. and is, therefore, left to the states to regulate under the doctrine of **International Union of U. A. W. v. Wisconsin Empl. Rel. Bd.**, 336 U. S. 245 (1949). See also **N. L. R. B. v. Fansteel Metallurgical Corp.**, 306 U. S. 240 (1939).

A. A Strike Which Creates a State Emergency Is After State Seizure No Longer Protected by Either §§ 7 or 13 Because It Ceases to Be a "Peaceful" Strike.

When the Governor of Missouri, acting pursuant to legislative authority, has found that a strike threatens the "public interest, health and welfare" and has taken possession of a local public utility "for the use and operation by the State of Missouri in the public interest", § 295.180 (1), R. S. Mo. 1949, the strike is thereafter no longer a peaceful strike. As mentioned above this Court has held that the Wagner and Taft-Hartley Acts were not intended to usurp from the states their "historic powers of such traditionally local matters as public safety and order and the use of the streets." **Allen Bradley Local v. Wisconsin Empl. Rel. Bd.**, 315 U. S. 740 (1942). How then can it be successfully urged that Congress by its silence intended to leave the states impotent to maintain the safety and welfare of their citizens in the procurement of the supply of gas declared by the state legislature to be one of the "life essentials of the people"? § 295.010, R. S. Mo. 1949.

Surely if the power to prevent mass picketing, threats, blocking of entrances and of streets is left in the states by

the Taft-Hartley Act; if the violence and trespass of "sit-down" strikes is unprotected by the Taft-Hartley Act; and if intermittent unannounced work stoppages may be enjoined by state action—then surely Congress has left to the states the right and power to prevent the catastrophic effect of strikes or lock-outs in local public utilities which in the opinion of the state's highest elective official threaten "the public interest, health and welfare." This would seem to be the case "governable by the state or it is entirely ungoverned," **International Union, U. A. W. v. Wisconsin Empl. Rel. Bd.**, 336 U. S. 245 at 254 (1949).

Strikes or lock-outs which can shut off water, gas or electricity, when they are found by the Governor to threaten the public interest, health and welfare, cease being peaceful strikes. They jeopardize the people of the state far beyond the effect of "sit-down" or picket-line violence. The effect of the Governor's proclamation that the strike or lock-out so threatens the people and that the state is taking possession of the utility for the use by the state in public interest is tantamount to a declaration that henceforth a strike or lock-out will no longer be peaceful but that it will threaten the peace of the people of the state. This threat to the public when coupled with the quasi-public nature of utilities and the states' traditional control and regulation thereof all militate against a construction of the Taft-Hartley Act finding implicit therein an intent of Congress to pre-empt from the states their ultimate right and duty of sovereignty, the maintenance of the interest, health and welfare of their citizens.

CONCLUSION.

For the reasons stated herein, amicus curiae respectfully submits that this Court should affirm the decision of the Supreme Court of Missouri, and hold that the seizure-no-strike provisions of the King-Thompson Act are

a constitutional exercise of the state's police power and are not in conflict with the National Labor Relations Act of 1935 as amended by the Labor Management Relations Act of 1947.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

Appeal from the Supreme Court of the State of Missouri.

BRIEF

Of the Chamber of Commerce of Metropolitan St. Louis as Amicus Curiae.

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BRIEF

Of the Chamber of Commerce of Metropolitan St. Louis as Amicus Curiae.

By leave of Court, the Chamber of Commerce of Metropolitan St. Louis files this brief as *amicus curiae*.

THE INTEREST OF THE AMICUS CURIAE.

The Chamber of Commerce of Metropolitan St. Louis is a corporation organized under the laws of the State of Missouri and has as its purpose the promotion of the commercial, industrial, financial, business, cultural, educational and civic interests and the general welfare of the public of St. Louis and of the St. Louis metropolitan area. The *amicus* is not a pecuniary profit-earning corporation. It has as its members numerous firms and individuals representing the commercial, industrial, financial and business interests of the City of St. Louis.

The members of the St. Louis Chamber of Commerce are vitally interested in the outcome of this litigation. Many of the members are users of gas distributed by the Laclede

Gas Company in the City and County of St. Louis, Missouri, and are dependent upon it for the operation of their businesses. If the State of Missouri does not have the power, under certain emergency circumstances, to take possession of a public utility distributing gas to the many businesses located throughout the City and County of St. Louis, not only would many of these businesses be prevented from rendering to the community at large services which the community needs and desires, but also the very safety and existence of these businesses would be in jeopardy. Under the facts of this case, this *amicus* believes that a dangerous situation existed in the City of St. Louis which was of vital concern not only to the business interests of the community which have large investments in the form of physical facilities in the metropolitan area, but also to the public at large whose physical welfare was threatened. This condition necessitated the state action which was taken in this case.

Although this *amicus* believes that this case has become moot, that issue will not be discussed in this brief since the State of Missouri, appellee in this case, has adequately demonstrated the validity of that position. See brief for the appellee, State of Missouri, pages 11-14. This brief will confine its argument to the following propositions:

(1) Federal law has always recognized the power of the states to deal effectively with emergency situations involving labor disputes which affect interstate commerce;

(2) The facts of this case conclusively demonstrate that an emergency situation did exist in the City of St. Louis at the time the Governor proclaimed "that the public interest, health and welfare" were jeopardized and seized Laclede Gas Company;

(3) The Missouri law provided the only effective way in which the State could protect the welfare of the public in this emergency situation.

ARGUMENT.

I.

The Federal Law Has Always Recognized the Power of the State to Deal Effectively With Emergency Situations Involving Labor Disputes.

From **Allen-Bradley Local v. Wisconsin Employment Relations Board,** 315 U. S. 740, to the recent "landmark" case of **San Diego Building Trades Council v. Garmon,** 359 U. S. 236, 250, this Court has always recognized that the states have the power to act under their historic police power in labor disputes affecting interstate commerce where an emergency situation exists. The **Garmon** case contains the most recent exposition of the Court's thinking in "pre-emption" cases in the labor field. Both the majority opinion, written by Mr. Justice Frankfurter, and the concurring opinion, written by Justice Harlan, recognize the power of a state to exercise its authority over a labor dispute in case of an emergency such as the one which existed in this case. As the majority opinion pointed out, "Where the regulated conduct touched interests * * * deeply rooted in local feeling and responsibility", this Court will "not infer that Congress had deprived the State of the power to act" 359 U. S. at page 244. And, as the concurring opinion points out, there is no pre-emption unless the conduct involved "is, or may fairly be regarded as, federally protected activity" Id. at page 250. The concurring opinion goes on to cite "violence" cases as instances in which union activity has been held to be not federally protected, and warns against limiting "the ability of States to furnish an effective remedy under their own laws" or reducing the State power to act "to the vanishing point." Id. at pages 253, 254.

In **Allen-Bradley**, supra, an emergency situation existed, and this Court held that the activity there involved was not protected and that the State had the right under its police power to control that activity. In that case, the Wisconsin Employment Relations Board had ordered the union and its members to cease and desist from mass picketing threatening employees obstructing and interfering with factory entrances, and obstructing and interfering with the free use of the public streets, roads and sidewalks. This activity of the union created an emergency situation which threatened the welfare of the citizens of Wisconsin. There, as here, the union contended that the National Labor Relations Act pre-empted state jurisdiction over the conduct involved. Recognizing the State's obligation to maintain peace in the community and to protect the welfare of its people, this Court held that the Federal Act did not preclude a state from enacting legislation designed to meet this obligation. The **Allen-Bradley** opinion pointed out that "this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested'." **Allen-Bradley v. Wisconsin Employment Relations Board**, 315 U. S. 740, 749, quoting with approval from **Napier v. Atlantic Coast Line R. R. Co.**, 272 U. S. 605, 611.

The Federal statutes dealing with labor management relations certainly do not manifest an intention by Congress to prevent the states from exercising their historic police power. On the contrary, the Labor Management Relations Act of 1947, 29 U. S. C., Sections 141 et seq., expressly recognizes the need for action in emergency situations. The Act permits strikes to be enjoined when the "national health or safety" is imperiled. 29 U. S. C., Sec. 176-178. Surely, a Congress which gave the Federal Government the power to act in national emergencies to protect the national health and safety did not intend to leave the State powerless in

local emergencies involving local disputes to protect the health and safety of a locality.

In **International Union v. Wisconsin Employment Relations Board,** 336 U. S. 245, this Court upheld the power of a State to order a Union to cease and desist from instigating certain intermittent and unannounced work stoppages. In so doing, the Court stated that in both the National Labor Relations Act and the Labor Management Relations Act of 1947 "'Congress designedly left open an area for state control'" and that "'the intention of Congress to exclude states from exerting their police power must be clearly manifested.'" Id. at page 253, quoting with approval from **Allen-Bradley v. Wisconsin Employment Relations Board,** 315 U. S. 740, 750, 749. If Congress left open an area which permits the states to enjoin intermittent work stoppages, *a fortiori*, if left open an area which permits the states to enjoin strikes which jeopardize the local public health and welfare.

Again, in the **United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board,** 351 U. S. 266, this Court upheld the power of the State of Wisconsin to enjoin mass picketing and interference "with the free and uninterrupted use of public ways." Id. at pages 268-269. In so doing the Court pointed out that the States "are the natural guardians of the public against violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. We would not interpret an Act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect." Id. at pages 274-275. These words are particularly appropriate to the case at hand.

By the time of **Youngdahl v. Rainfair, Inc.,** 335 U. S. 131, the thrust of the rule announced in **Allen-Bradley** and reiterated in **International Union** and **United Automobile**

had been so thoroughly recognized that it was conceded in that case that the State had the right under the police power to enjoin the acts of violence there involved. Id. at page 138. In **Youngdahl** the threat to the state public welfare consisted of scattering roofing tacks on the company's parking lot, threats to company employees, puncturing automobile tires, and other acts of violence. Although these acts certainly were a threat to the public and were properly enjoined, they were in no sense as great a threat to the security of the public as were the acts involved in the case at hand, which involved not only the escaping of gas and the existence of gas fires, but also involved a threat to the operation of hospitals in the St. Louis area which used gas for sterilization, hot water heating, cooking and space heating (R. 346).

Thus, this Court has reiterated time and again the proposition that the states have the power to deal effectively with labor disputes involving emergency situations even though interstate commerce may be involved. Even a casual reading of **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board**, 340 U. S. 383, the case upon which appellants exclusively rely, demonstrates that its holding is not to the contrary. State action in that case was not premised on an emergency situation. On the contrary, the State acted merely because a strike was threatened in a public utility, and the "Public Utility Anti-Strike 'Law'" of Wisconsin specifically prohibited strikes by public utilities. As this Court pointed out, the Wisconsin act was not "'emergency' legislation but a comprehensive code for the settlement of labor disputes between public utility employers and employees. Far from being limited to 'local emergencies,' the act has been applied to disputes national in scope, and the application of the act does not require the existence of an 'emergency.'" Id. at pages 393, 394. Moreover, the facts of **Amalgamated**

show that no emergency existed. The strike was enjoined before it had even begun and before any threat to the public health and welfare existed.

The case at hand is remarkably different from **Amalgamated.** The state law here involved, the King-Thompson Act, does not permit state action unless "the public interest, health and welfare are jeopardized." Mo. Rev. Stat., Sec. 295.180 (2). As the State of Missouri has pointed out in its brief, it is of special significance that in only seven of twenty-three strikes involving public utilities has the state law been invoked and the utility seized, and then it was invoked only after a finding that the public interest, health and welfare were jeopardized. See the appendix to the brief of the appellee, pages 35-39. These facts demonstrate that the law under attack here is not a "Public Utility Anti-Strike Law". It is a law which allows the State to act in emergency situations involving public utilities. The Supreme Court of Missouri has held that the King-Thompson Act "is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities" as the Wisconsin Act was (R. 353). See **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board,** 340 U. S. 383, 393-394. That interpretation by the Missouri Supreme Court of the Missouri Act is binding on this Court. **Allen-Bradley v. Wisconsin Employment Relations Board,** 315 U. S. 740, 747, and cases there cited.

Thus, the prior decisions of this Court have not precluded, but in fact have allowed, state action in emergency situations. Such action is authorized both because it touches an "interest . . . deeply rooted in local feeling and responsibility" and because the activity in question is not a "federally protected activity." See **San Diego Building Trades Council v. Garmon,** 359 U. S. 236, 244, 250.

II.

The Facts of This Case Show an Emergency Situation Justifying State Action.

On July 1, 1956, Laclede Gas Company had approximately 2,500 employees. On that date 1,800 of these went on strike. From July 1 to July 10, the company received 13,000 calls complaining of "no gas" or failure of service or gas leaks (R. 39). Under normal conditions, Laclede Gas Company would usually receive something less than a hundred calls in a ten-day period (R. 39). At 6:20 P. M. on July 5, 1956, a bolt was thrown through the window of one of the sub-stations of the company. At 1:15 A. M. on July 6, the odor of gas was reported coming into the Forest Park office of the company. The odor was discovered to be the result of the throwing of a bottle of gas odorant through a window of that office (R. 40-41). At about the same time the city lighting department reported a gas leak was on fire. Mallinckrodt Chemical Company of St. Louis, which was doing work for the Atomic Energy Commission, complained of gas found in an inner tube in their laboratory (R. 41).

Reports were received indicating that water had been injected into the gas system at Laclede Gas Company. In one instance a gas meter was removed, the gas line was connected to a water line with a hose, and water was pouring through the water line into the gas line. Water in a gas line creates a serious safety problem because it causes a customer's gas to be temporarily shut off and after the water has passed, gas may come back on and escape through an outlet, thereby creating a dangerous condition (R. 45-46). In addition, a number of valves which control the service of gas to a large number of customers were shut off by unauthorized persons (R. 46-47).

On July 9, 1956, a gas fire was discovered in a manhole at Engler and Thomas Streets. This fire was brought under control but the Laclede Gas Company was unable to ascertain the source of the gas which was on fire because of a lack of personnel available to do this type of work (R. 48-49). Gas leaks in sewers are a considerable hazard because of the likelihood of a large scale explosion (R. 49).

Since July 1, on at least four occasions the long distance regulators of the Gas Company were out of service. At Station A of the Gas Company wires were disconnected from the main switch which operated the motors to the power pumps. This condition could allow gas to leak into the air which would create an explosive mixture, thereby increasing the danger of an explosion (R. 98-99). In one instance meters were taken away from an apartment house and later found in a pond in a city park. Another instance showed that the dials of the meters in another apartment house were damaged (R. 50).

There were numerous reports that gas odorant had been dropped by persons unknown throughout the city and county areas of St. Louis. This created a dangerous condition in two respects. First of all, residents of the area where gas odorant has been dropped could panic with fear over the possibility that there was gas actually escaping. Secondly, if gas did escape in an area where gas odorant had already been dropped, it would be impossible to detect the gas and this would increase the likelihood of a dangerous explosion (R. 50-51).

These facts clearly show the existence of an emergency situation. As the Court below stated, this evidence "was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the Governor issued his proclamation and execu-

tive orders" (R. 348). The Governor of a state has a great deal of discretion in emergency situations and his determination that there exists an emergency affecting the health and welfare of the public is entitled to great weight in this Court. **Moyer v. Peabody,** 212 U. S. 78; and see **Sterling v. Constantin,** 287 U. S. 378, 399, and cases there cited. Indeed, appellants in their brief do not even challenge the determination by the Governor that a state of emergency existed.

This Court has upheld state action in fact situations less compelling than those in the case at hand. This case involves more than the mass picketing and obstruction of the use of streets and sidewalks which the Court allowed the State of Wisconsin to enjoin in **Allen-Bradley Local v. Wisconsin Employment Relations Board,** 315 U. S. 740, and in **United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board,** 351 U. S. 266. It involves more, even, than the scattering of tacks on a company parking lot, the shouting of threats to company employees, and the puncturing of tires which the Court held that the State of Arkansas could enjoin in the case of **Youngdahl v. Rainfair, Inc.,** 355 U. S. 131. The facts of this case show a pervading emergency situation throughout the City and County of St. Louis, which threatened the safety, health and welfare of the people, and threatened the peace of the community at large. Surely, the State had the power to deal effectively with this dangerous condition.

III.

The Only Effective Way to Meet the Emergency Condition Which Existed Was to Invoke the Law Here Under Attack.

Nothing short of the seizure of the public utility here involved and the ordering of its employees back to work

could have successfully dealt with the emergency condition which was created by the strike. Every employee of the company was needed to meet the situation. Men were needed to ascertain the source of gas which had escaped into sewers (R. 49) and to answer some 13,000 calls from customers reporting no gas, failure of service, or gas leaks existing in the streets (R. 39). Moreover, the employees had possession of a majority of the keys which were used to open and shut gas valves and by calling the employees back to work, the state was able to eliminate the unauthorized shutting off of gas valves (R. 43-44, 46-47).

This was not a situation in which an injunction prohibiting the union from committing acts of violence would be sufficient to meet the emergency. See, e. g., **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131. In this case, responsibility for the emergency situation could not be placed with the union (R. 348). Thus, an injunction solely against violent activity by the union would be ineffective. The only possible manner in which to cope with the situation was to get the employees back to work to deal with the flood of complaints and emergency conditions which arose after the union called the strike. In **Youngdahl**, what "violence there was was scattered in time and much of it was unconnected with the picketing." There was "nothing in the record to indicate that an injunction against such conduct would be ineffective if picketing were resumed." 355 U. S. 131, 139. In the present case, on the other hand, the emergency permeated the entire community and affected almost every citizen in St. Louis. The record shows conclusively that a partial injunction would be futile and that the entire work force of Laclede Gas Company was needed to cope with the situation.

In exercising its police power, the State has a wide area of discretion in dealing with emergency situations. Cf. **Moyer v. Peabody**, 212 U. S. 78; **Milk Wagon Drivers Union**

v. Meadowmoor Dairies, 312 U. S. 287, 295. There is nothing which "prevents a state if it so chooses from placing confidence in a chancellor's decree and compels it to rely exclusively on a policeman's club." **Milk Wagon Drivers Union v. Meadowmoor Dairies,** 312 U. S. 287, 295.

The state statute in question authorizes the Governor to take immediate possession of a public utility where the public interest, health and welfare are jeopardized. Mo. Rev. Stat., Sec. 295.180. When the utility has been seized it becomes unlawful for any person thereafter to participate in a strike of that utility. Mo. Rev. Stat., Sec. 295.200. If the employees refuse to go back to work after a public utility has been seized by the Governor, the courts of the State of Missouri have the power to order them back to work. Ibid. This statutory scheme for dealing with emergency conditions in public utilities is not arbitrary or unreasonable, but is, on the contrary, a sound and reasonable method of dealing with threats to the public welfare. This scheme is not too unlike the federal scheme for protecting the public health and safety in cases of a national emergency. See the Labor-Management Relations Act of 1947, 29 U. S. C., Sec. 176-178. This Court should not upset state action which is reasonably designed to meet the needs of its citizens, nor should this Court substitute its judgment for the judgment of the State in how the State may best meet threats to its general welfare. Cf. **Moyer v. Peabody,** 212 U. S. 78; **Milk Wagon Drivers Union v. Meadowmoor Dairies,** 312 U. S. 287, 295, 299.

CONCLUSION.

For the foregoing reasons this *amicus curiae* respectfully submits to the Court that the judgment of the Supreme Court of Missouri should be affirmed because the state action here involved does not conflict with federal law and

is a valid exercise of the state police power which was necessitated by emergency conditions existing in the City of St. Louis.

Respectfully submitted,

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No. 42.

In the Supreme Court of the United States

October Term, 1959.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*,

vs.

STATE OF MISSOURI.

On Appeal from the Supreme Court of Missouri.

BRIEF OF MISSOURI STATE CHAMBER OF COMMERCE, THE CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI, THE MISSOURI FARM BUREAU FEDERATION, THE CHAMBERS OF COMMERCE OF ST. JOSEPH, SPRINGFIELD AND JOPLIN, MISSOURI, AS *AMICI CURIAE*.

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By leave of this Court the Missouri State Chamber of Commerce, the Chamber of Commerce of Kansas City, Missouri, the Missouri Farm Bureau Federation and the Chambers of Commerce of St. Joseph, Springfield and Joplin, Missouri, file this brief as *amici curiae*.

THE *AMICI CURIAE* AND THEIR INTEREST.

The Missouri State Chamber of Commerce; a non-profit membership corporation formed under the laws of Missouri, represents commercial, industrial, professional and civic interests throughout the entire State of Missouri. Its purpose and function is to serve the public interest as well as advancing and protecting the collective interests of its members. The Chamber of Commerce of Kansas City, Missouri, and the Chambers of Commerce of St. Joseph, Springfield and Joplin, Missouri, are similarly organized and represent varied commercial and industrial interests in their respective geographical areas. The Missouri Farm Bureau Federation is an agricultural cooperative organization whose members are interested in all phases of agriculture. The Missouri Farm Bureau Federation is integrated with local farm bureaus in small communities throughout Missouri.

The vast membership of *amici curiae* is vitally interested in this contest of the state's power to protect its interest, safety and welfare in a labor dispute. Largely possessed of business and commercial interests, these members are employers and suppliers of various services and products for our society. The injury caused to the public by the interruption of vital utility services, such as the supplying of natural gas, would be compounded through the attendant effect upon business and industry generally. Thus, the interest of *amici curiae* herein, in the validity of the state action in this case under the King-Thompson Act, is more advanced, though perhaps no less dear, than the interest of the general public.

Amici curiae realize the importance and necessity of collective bargaining in our social scheme and recognize the rights of employees to take peaceful concerted action to advance their own interest. Collective action is indeed a basic

tool of *amici curiae*, themselves. Nevertheless, collective action is not free from responsibility or restraint. The right of peaceful assembly does not grow into the right to riot, and the right to strike should not include the right to initiate or prolong a disruption of vital utility services to the extent that the public interest, health and safety would be jeopardized.

The parties to this dispute, in their briefs before the Supreme Court of Missouri, presented and argued a number of issues. *Amici curiae*, in this brief, is limiting its arguments to those critical issues relating (1) to whether the exercise of state power in averting a local emergency in this case conflicts with federal law and (2) of the distinction between this case and the decision of this Court in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951).

SUMMARY OF ARGUMENT

I.

A. The King-Thompson Act provides for mediation of labor disputes involving certain public utilities. Emergency relief, in the form of seizure and a subsequent strike ban, is available when the public interest, health and welfare are jeopardized. Section 295.180 Mo. Rev. Stat. (1949). In this protection of the public interest, the King-Thompson Act represents a natural exercise of the state's police power. The states have been called the "natural guardians of the public against violence." *United A. A. & A. I. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266, 274 (1956). The King-Thompson Act merely enables the State of Missouri to effectively discharge these guardianship responsibilities.

B. The strike at the Laclede Gas Company, which led to this case, resulted in a serious and alarming interruption

of utility service. The Missouri Supreme Court, after reviewing evidence of sabotage, failure of gas service, fires and other perils, found from the evidence that the public interest, health and safety were jeopardized. The validity of the King-Thompson Act must be determined in relation to the emergency which requires its application. The constitutionality of the Act, in an abstract sense, is not an issue. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 746 (1942).

The right of states, to act in local emergencies arising from labor disputes affecting commerce, has been firmly established in the leading decisions on federal pre-emption. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; *United Construction Workers* v. *Laburnum*, 347 U. S. 656.

The state has a dominant interest in preventing violence and property damage. *United A. A. & A. I. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266. State action has been upheld in a series of disputes involving violence, property damage and various forms of breaches of the peace. The instant case is not basically different, except that in it property damage and peril are greater, and the emergency more compelling.

C. The Court has frequently stated that the intention of Congress to exclude the states from exercising their police power must be clearly manifested. *United A. A. & A. I. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266; *International Union UAW* v. *Wisconsin Employment Relations Board*, 336 U. S. 245. Congress has not expressed clear and patent directions to exclude state action in this field. Since states have a compelling and superior interest in the maintenance of local domestic peace, state jurisdiction in such matters should not be denied in the absence of such clear Congressional direction.

II.

The Missouri Supreme Court rightfully decided that the decision in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951), did *not* rule this case. Not only are the statutes quite different but the facts of the two cases, which laid the basis for invoking the statutes, are substantially different.

The Wisconsin Act provided for compulsory arbitration of disputes involving public utilities; the King-Thompson Act does not. The Wisconsin Act banned all public utility strikes; the King-Thompson Act does not. The Wisconsin Act was not "emergency" legislation and did not "require the existence of an emergency," *Amalgamated* case 340 U. S. at 393. Seizure under the King-Thompson Act is strictly emergency legislation, invoked but seven times since the passage of the Act, and requiring the Governor's proclamation that the public interest, health and welfare are jeopardized.

The instant case, as opposed to the situation in *Amalgamated*, involved an actual strike, utility service interruption, property damage, sabotage, fires and escaping gas. It is not the decision in *Amalgamated*, but "the type of conduct involved" that should control this case. See *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, where the Court stressed "the type of conduct involved" as being the determining factor for allowing state jurisdiction in *United Construction Workers* v. *Laburnum*, 347 U. S. 656.

ARGUMENT.

I.

The King-Thompson Act is a valid exercise of state authority.

A. The Statute governs an area over which the states are natural guardians.

The Missouri statute, which authorized the Governor of Missouri to seize the Laclede Gas Company and which brought about the end of a dangerous and emergent situation within the St. Louis area, appears as Chapter 295, Mo. Rev. Stat. (1949). This statute, popularly known as the King-Thompson Act, has been described as having two parts, one relating to mediation and the other to seizure.[1]

Mediation is accomplished through the State Board of Mediation created by the Act. The Board has power to attempt to mediate labor disputes in public utilities but has no power or authority to compel concession, to force a settlement or to arbitrate the issues in dispute.

Seizure is provided for in the Missouri Act, in Section 295.180, Mo. Rev. Stat. (1949), in part as follows:

> "* * * any strike, work stoppage or lockout which, in the opinion of the Governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare * * * and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the State of Missouri in the public interest."

Section 295.180.2 outlines the procedure under which the power and authority of the Governor to effect seizure

[1] Twelve years under the King-Thompson Act, page 3, published by Missouri State Board of Mediation (1959).

may be accomplished, and under this section the Governor is required to issue a proclamation after an investigation demonstrates that there is a threatened or actual interruption of the operation of the public utility and that the *public interest, health and welfare are jeopardized.*

Not all strikes in public utilities are made unlawful by the King-Thompson Act. The law merely provides that it becomes illegal to effect a strike or to continue a strike already in progress only after the Governor has made a finding that the public interest, health and welfare are jeopardized by the strike and after the utility involved has been seized.

In its opinion in this case, 317 S. W. 2d 309 (1958), the Supreme Court of Missouri comments as follows on the purpose of the King-Thompson Act:

> "The dominant purpose of the King-Thompson Act is the protection of the welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state. Its provisions are directed against both the utility and its employees for the purpose of protecting the patrons and the public generally. While it makes mediation services and public hearing panels available, it does not force these services upon the parties. This is consistent with the policy of the Labor Management Relations Act, 1947. The Act does not purport to be a complete set of labor relation laws."

In this protection of the publice interest, health and welfare, the King-Thompson Act represents a natural exercise of the state's police power. Our society has become more complex and intricate, even since 1947 when Taft-Hartley was added to our federal labor legislation. The necessity of constant supply of certain vital utility

services, such as those covered by the King-Thompson Act (electric light or power, heat, gas, steam, water, sewer service, transportation excepting railroads, and communication) cannot be questioned. Failure of these services can immediately lead to grave public disorder, peril, and chaos. Truly, as stated in the policy of the Act (Section 295.010, Mo. Rev. Stat., 1949), the supply of these services are "life essentials of the people".

In *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, 351 U. S. 266, 274, 275, 100 L. Ed 1162 (1956), this Court stated "the states are the natural guardians of the public against violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction." Years ago, this Court in *Thornhill* v. *Alabama*, 310 U. S. 88, 105, 84 L. Ed. 1093 (1940), stated:

> "* * * The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents cannot be doubted." * * *

The power, indeed the duty, of the State of Missouri to take steps, by means of such emergency legislation as the King-Thompson Act, to protect the property and lives of its citizens, likewise cannot be doubted.

B. The National Labor Relations Act does not exclude all state power in industrial relations affecting commerce.

As Mr. Justice Frankfurter recently said, this "issue is a variant of a familiar theme."[2] The principal issue is whether the Missouri statute, relating to labor disputes in public utilities, so conflicts with and invades the field

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[2] *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775 (1959).

covered by the National Labor Relations Act that it must yield to that federal law.

The evidence in this case, as summarized by the Missouri Supreme Court (317 S. W. 2d 309, 317, 318), disclosed the existence of a bursting crisis. The strike began on July 1, 1956, and during the first ten days of its duration the situation had grown to be one of alarming peril to the public interest, health and welfare. The strike at the Laclede Gas Company was accompanied by several acts of sabotage. After reviewing the evidence, the court stated:

> "While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders."

The validity of the judgment and decree of the St. Louis Circuit Court, affirmed by the Missouri Supreme Court, *en banc*, must be determined under the facts of the case before us. The validity of the King-Thompson Act in an abstract sense is not an issue. Whether state action, to restrict the strike in this case, may be permitted to stand must be determined against the background of the facts involved in this case. In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 746, 86 L. Ed. 1154 (1942), this Court said:

> "We deal, however, not with the theoretical disputes but with concrete and specific issues raised by actual cases. * * * 'Constitutional questions are not to be dealt with abstractly.' * * * They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us."

In the instant case, the state temporarily stopped a strike to prevent a local catastrophe in spite of the general superiority of federal law in labor matters affecting commerce. The right of states to act in such local emergencies is a principle frequently announced in the leading decisions of federal pre-emption.

This Court first faced the federal pre-emption issue in connection with the conflict of federal and state labor legislation in the *Allen-Bradley* case, 315 U. S. 740. There, the employee or union conduct and activity forbidden by the State Board related to breaches of the peace such as mass picketing, threatening of employees and obstruction of factory entrances, streets and public roads. The Court held that the order of the Wisconsin Board, declaring such conduct to be unfair labor practices and requiring strikers to cease and desist, was not unconstitutional and void. In the opinion, the Court stated:

> "* * * We conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. See *Sinnot* v. *Davenport*, 22 How. (US) 227, 243, 16 L. Ed. 243, 247." 315 U. S. at 751.

Since then, this Court has frequently recognized the validity of state action to maintain local peace and prevent violence. In *Garner* v. *Teamsters Union*, 346 U. S. 485, 488, 98 L. Ed. 228 (1953), the Court, after noting that the Labor Management Relations Act "leaves much to the

states, though Congress has refrained from telling us how much," repeated the following principle:

> "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union, U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254, 93 L. Ed. 651, 663, 69 S. Ct. 516."

Later, in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 476, 477, 99 L. Ed. 546 (1955), the Court reviewed prior decisions where state exercise of authority in the field of labor relations was found not to be exclusively absorbed by the federal law. These include the decisions in *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, and *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245. Because of the type of injurious conduct involved, state action was held to be permissible in these cases.

Still later, this Court in *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, 351 U. S. 266, 274, 100 L. Ed. 1162 (1956), reaffirmed the doctrine recognizing state jurisdiction in labor relations matters where because of violence, property damage, and breaches of the peace, the state had a compelling interest to protect the public welfare. In that case (351 U. S. at 274), the Court noted that "the dominant interest of the state in preventing violence and property damage cannot be questioned." State jurisdiction was thus upheld even if the union's violent conduct also violated federal law.

This dominant interest of the state where such injurious conduct is involved likewise was held to permit state jurisdiction in *International Union U. A. A. & A. I. W.* v. *Russell*, 356 U. S. 634, 2 L. Ed. 2d 1030 (1958), and *Youngdahl* v. *Rainfair*, 355 U. S. 131, 2 L. Ed 2d 151 (1957). Certainly, the underlying principles in these decisions can not be ignored. Breaches of the peace, violence, property damage and other forms of injurious conduct motivated the state action held to be permissible. In this case substantial actual and threatened property damage, actual and threatened personal injuries and the growing interruption of vital gas service which was fast breeding a local catastrophe motivated the state action. If a state may validly act to prevent mass picketing or breaches of the peace at a single plant, and if it may validly act to prevent threats of harm and general injurious conduct to the employees of a single employer, why should a state be powerless to prevent a serious and alarming emergency affecting an entire local community? In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 751, this Court said:

> "* * * this case is not basically different from the common situation where a state takes steps to prevent breaches of the peace in connection with labor disputes."

The language in this foundation case is equally applicable here.

C. The intention of Congress to exclude state action in this field has not been clearly manifested.

This Court has frequently said it would not hold that the states are powerless to act in local emergencies unless the intention of Congress to exclude state action was

clearly manifested. After stating that the prevention of violence and property damage is a matter of "genuine local concern," this Court in *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, 351 U. S. 266, 274, 275, stated "* * * *We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect.*" (Emphasis supplied.)

Also, in *International Union UAW v. Wisconsin Employment Relations Board*, 336 U. S. 245, 253, 93 L. Ed. 651 (1949), the Court stated:

> "* * * However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act which is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that '*the intention of Congress to exclude the States from exercising their policy power must be clearly manifested.*' *Allen-Bradley Local, U. E. R. M. W. v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 750, 86 L. Ed. 1154, 1164, 1165, 62 S. Ct. 820. We therefore turn to its legislation for evidence that Congress has clearly manifested an exclusion of the state power sought to be exercised in this case.
>
> "Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. * * *" (Emphasis supplied.)

After citing those decisions relating to state exercise of jurisdictions in labor-management disputes involving "* * * conduct marked by violence and imminent threats to the public order," the Court in *San Diego Bldg. Trades*

Council v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 784 (1959), stated:

> "* * * State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overriden *in the absence of clearly expressed congressional direction.*" (Emphasis supplied.)

Obviously, Congress has not expressed clear and compelling direction to exclude state action from this field. On the contrary appellants do not argue that there is such clear and manifest direction, but instead urge that there is some significance in the failure of Congress to expressly place local utility disputes under the control of the federal law. Mr. Justice Frankfurter noted this in his dissent in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 403 (1951), when he stated:

> "At the outset it should be noted that the Taft-Hartley Act does not, in specific terms, deal with the problem of local strikes in public utilities even though such strikes, as a matter of constitutional law, may be brought under federal control. Congress considered and rejected special provision for settling public-utility disputes under federal law. * * * Due regard for basic elements in our federal system makes it appropriate that Congress be explicit if it desires to remove from the orbit of State regulation matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests."

The focus of the King-Thompson Act is upon local emergencies in certain public utility labor disputes. Since Congress has not expressly directed that states shall be

precluded from exercising their police power in such matters, the action of the State of Missouri in this case should be upheld.

II.

The amalgamated decision does not control this case.

Certainly, it is most important in this case to consider this Court's decision in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951). To fully understand the *Amalgamated* decision a review of the decision of the Wisconsin Supreme Court in that case (257 Wis. 43, 42 N. W. 2d 471) is helpful. The facts, as they appear in these two decisions, show there was no actual strike or any interruption of necessary public utility services in that case and there was no emergency or violence such as occurred in the strike at the Laclede Gas Company.

In the opinion of the Supreme Court in the *Amalgamated* case (340 U. S. 383, 388), the Court examined closely one of the features of the Wisconsin Act which is substantially different from the Missouri Act, and the Court stated:

> "* * * In summary, the act substitutes arbitration upon order of the Board for collective bargaining whenever an impasse is reached in the bargaining process. And, to insure conformity with the statutory scheme, Wisconsin denies to utility employees the right to strike."

This Court, in its opinion in the *Amalgamated* case, observed (340 U. S. at 393) that the Wisconsin Act was not "emergency" legislation and that it does not "require the existence of an 'emergency'." The Court further observed (340 U. S. at 395, 396) that the Wisconsin Act sought to "abrogate" the right to strike altogether

in so far as the petitioners in that case were concerned. It was stressed, in the opinion (340 U. S. at 394), that Congress had closed to state regulation "the field of peaceful strikes in industries affecting commerce" and that the State of Wisconsin sought "to deny entirely a federally guaranteed right." Later in the opinion (340 U. S. at 398), the Court categorized the Wisconsin Act as "forbidding peaceful strikes" and therefore as forbidding the "exercise of rights protected by § 7 of the Federal Act."

In *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 99 L. Ed. 546, the Court observed that in the *Amalgamated* decision the Wisconsin statute was held invalid because "* * * it denied a right which Congress had guaranteed under § 7 of the Taft-Hartley Act—*the right to strike peacefully* to enforce union demands for wages, hours and working conditions." (Emphasis supplied.)

As opposed to the situation which prevailed in *Amalgamated*, the dispute at the Laclede Gas Company in this case involved an actual strike, interruption of vital utility services, sabotage, fires, escaping gas and, in fact, a local emergency. The Governor, in the exercise of his administrative functions, and the lower courts in reviewing the evidence, found that the public interest, health and safety were jeopardized.

Not only are there substantial differences in the "type of conduct" involved in the *Amalgamated* case and the instant case, but there are also substantial differences in the content of the statutes at issue in these cases. Section 295.200, Mo. Rev. Stat. (1949), makes strike in public utilities unlawful only after seizure. Strikes *per se* are not prohibited.[1] In fact, in this case, the strike commenced

[1] There have been sixteen strikes in public utilities in Missouri in which seizure was not invoked as opposed to seven seizure strikes since the passage of the King-Thompson Act. See Twelve Years Under the King-Thompson Act, p. 21, Missouri State Board of Mediation.

and endured to the point of peril before state action to stop the strike was undertaken.

In addition, the Wisconsin Act, held invalid in the *Amalgamated* case, provided for compulsory arbitration as a substitute for collective bargaining. However, the King-Thompson Act (295.030—295.150, Mo. Rev. Stat., 1949), provides for mediation but the State Board of Mediation has no power or authority to arbitrate issues or to compel concessions.

In spite of such basic differences in the type of conduct and in the statutes involved, it is urged by appellants that the decision in the *Amalgamated* case controls this case. This Court in *International Association of Machinists* v. *Gonzales*, 356 U. S. 617, 619, 2 L. Ed. 2d 1018 (1958), recently indicated the difficulties in generalization in this field when it said:

> "* * * the other half of what was pronounced in Garner—that the Act 'leaves much to the states,'—is no less important. See 346 U. S. at 488. The statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation." * * *

Until recently, those interested in these matters advanced the decisions of this Court in *United Auto Workers* v. *Russell*, 356 U. S. 634, 2 L. Ed 2d 1030 (1958), and *United Construction Workers* v. *Laburnum*, 347 U. S. 656, 98 L. Ed. 1025 (1954), as supporting the state court's jurisdiction to award tort damage judgments in labor-management disputes upon the ground that there was no federal counterpart to the state damage remedy. However, upon arrival of the proper case before it, this Court in *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 785 (1959), stated that the *Laburnum* and

Russell decisions were determined "* * * by the 'type of conduct' involved, i. e., 'intimidation and threats of imminent violence'."

In the *Garmon* case, the conduct involved was entirely peaceful and in its second *Garmon* opinion (359 U. S. 236), this Court distinguished the *Laburnum* and *Russell* decisions on the basis of the conduct involved, i. e., peaceful conduct as opposed to conduct marked by violence and threats to the public order, and in the course of the opinon the Court set forth this important reminder:

> "In the area of regulation with which we are here concerned, the process thus described has contracted initial ambiguity and doubt and established guides for judgment by interested parties and certainly guides for decision. We state these principles in full realization that, in the course of a process of tentative, fragmentary illumination carried on over more than a decade during which the writers of opinions almost inevitably, because unconsciously, focus their primary attention on the facts of particular situations, *language may have been used or views implied which do not completely harmonize with the clear pattern which the decisions have evolved.*" 3 L. Ed. 2d at 781. (Emphasis supplied.)

Any doubts, which may arise from the *Amalgamated* case, as to state jurisdiction in the instant case should be completely solved by the long series of other decisions relating to state power to act in labor disputes where violence, breaches of peace and property damage create a compelling and overriding public interest.

Conclusion.

We live in a society of organized employers and organized employees. Disputes between them, especially when life essential public utility services are interrupted, may

disturb the local peace more seriously and for longer periods than disputes among individuals which every state controls without protest. One of the basic principles which manifests itself in the long series of federal pre-emption cases is that states retain jurisdiction in labor-management disputes affecting commerce to control and suppress such disturbances to local peace.

For all of the foregoing reasons, it is respectfully submitted that the decision of the Missouri Supreme Court below should be affirmed.

Respectfully submitted,

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No. 42.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION; AFL-CIO, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF KANSAS CITY POWER & LIGHT COMPANY, AMICUS CURIAE.

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Kansas City Power & Light Company, a Missouri corporation, hereby respectfully moves for leave to file a brief as *amicus curiae* in this case. The consent of appellee's attorney has been obtained. The consent of appellants' attorneys has been requested but refused.

The interest of Kansas City Power & Light Company in this case arises from the fact that it is a public utility

operating in the State of Missouri and obligated by the Public Service Commission Act of said State (Chapter 386, RSMo 1949) to render continuous, safe and adequate electrical service to the public in Kansas City, Missouri, and in other parts of the State. The Company operations are governed by the provisions of the act which is challenged in this proceeding (Chapter 295, RSMo 1949), commonly known as the King-Thompson Act, which was enacted to protect the people of Missouri from threatened interruptions in the service of public utilities.

In addition to its general interest in this legislation, arising from its duty to provide continuous service to the public, Kansas City Power & Light Company is interested as a party having had direct experience under the act. The Company was seized, pursuant to the provisions of the King-Thompson Act, in 1956 and again in 1957, when the Governor of Missouri determined that labor disputes between the Company and its employees threatened to interrupt the operations of the Company and to disrupt electrical service to the public.

Further, the Company is interested in pending litigation which will be affected by this case. Those employees of the Company represented by Local Union 1464, International Brotherhood of Electrical Workers, have filed two suits in the United States District Court for the Western District of Missouri, challenging the constitutionality of the King-Thompson Act. The first of such suits (*Local Union 1464, International Brotherhood of Electrical Workers*, v. *James T. Blair, Jr., et al.*, U.S.D.C.W.D.Mo., W. Div., No 10907) was dismissed as moot by the District Court on June 13, 1957. An appeal to this Court was dismissed by the District Court on September 9, 1958. A similarly-styled suit (numbered 11840) was filed on October 29, 1957, and is now pending in Kansas City.

This pending litigation, challenging the constitutionality of the King-Thompson Act, and filed by employees of Kansas City Power & Light Company, may be controlled by the decision rendered by the Court in the instant case.

Filing of the attached amicus brief is desirable because, in the Supreme Court of Missouri, appellee failed to join in the request of *amici curiae* that the appeal be dismissed for mootness, which request was grounded on the fact that the injunction against appellants, hereinafter discussed, had expired of its own terms (R. 341). There is no reason to believe that appellee will now advocate a ruling of mootness, not having done so below. Being convinced that prior decisions of this Court require a finding of mootness, Kansas City Power & Light Company is prepared to advocate such a ruling. Further, the Company makes additional arguments in the attached brief, relative to recent decisions of this Court and to legislative history, none of which was covered by the appellee in its brief below. If any of the additional arguments here advanced are accepted, they would be dispositive of the case.

Respectfully submitted,

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October , 1959

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

BRIEF OF KANSAS CITY POWER & LIGHT COMPANY, AMICUS CURIAE.

INTEREST OF AMICUS CURIAE.

A statement of the interest of Kansas City Power & Light Company in this litigation is set forth in the foregoing motion for leave to file brief as *amicus curiae*, and is adopted herein by reference.

ARGUMENT.

I. Appellate Review of the Validity of the Injunction Below Cannot Be Had, When the Case Has Become Moot by Expiration of the Injunction.

In response to appellants' jurisdictional statement, this Court ruled, on May 4, 1959, "Further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits" (R. 375). This notation constitutes a special "warning that the Court has doubts about its jurisdiction over the appeal." Stern and Gressman, *Supreme Court Practice* (2d ed.) 53. Appellants had previously recognized a serious procedural problem, and devoted intensive consideration to the subject of mootness in their jurisdictional statement, pages 12-14.

Consideration of the question of mootness requires preliminary review of the status of this litigation, and of a companion case pending in the trial court. The suits were filed after the seizure of Laclede Gas Company on July 5, 1956, arising from emergency conditions stated in the proclamation of Governor Donnelly and in the executive order of the same date (R. 15, 17). Four days after seizure, on July 9, 1956, the present suit was filed (R. 7, 19). Litigation was based on a "Petition for Injunction," seeking to prevent a work stoppage and interruption of service by appellants (R. 7, 14-15). After a hearing, a decree of permanent injunction was entered on July 14, 1956, enjoining appellants from "continuing, inciting, supporting and participating in (a certain) work stoppage, refusal to work and strike . . ." (R. 277). The original decree denied appellants' petition for declaratory judg-

ment, filed as a counterclaim at the conclusion of the hearing (R. 272), which petition sought a ruling invalidating the entire Chapter 295, RSMo 1949, known as the King-Thompson Act. Thereafter, the trial court amended its order to limit the restriction on striking to the duration of state seizure, and entered a ruling that the act was valid in its entirety (R. 295). Before examining subsequent developments relating to this injunction suit, consideration will be given to concurrent litigation now pending in the trial court.

The Missouri Supreme Court took judicial notice (R. 341) that on July 7, 1956, two days after the seizure and two days before the filing of the injunction suit, the State filed against appellants a suit seeking statutory penalties on account of the work stoppage throughout July 6, 1956 (R. 313-317). In its opinion in this injunction suit, the Supreme Court noted that the suit for penalties was still pending in the trial court (R. 341).

The Missouri Supreme Court noted that after the filing of these two suits a labor agreement was signed between the disputants on August 10, 1956 and that the Governor terminated seizure of the utility on October 31, 1956. By the terms of the injunction, as amended, it expired on the latter date (R. 341, 295). The Supreme Court further ruled that the trial court should not have considered the constitutionality of sections of the act not directly involved and necessary to decision in testing the validity of the injunction (R. 344, 356, 361). Pursuant to this principle, the Missouri Supreme Court declined to rule on sections of the act "relating to monetary penalties and loss of seniority" (R. 356).

On this appeal, appellants apparently concede that the injunction itself no longer presents a live issue, but

seek to sustain life in the underlying legal issues on the ground that there are current questions relating to penalties and seniority (Brief for Appellants, 30-31). Thus, they ask this Court to reach the merits because the act contains provisions for penalties and loss of seniority which the Missouri Supreme Court specifically declined to review.

The procedural status of this case is almost identical with that in *Amalgamated Ass'n* v. *Wisconsin Employment Relations Board*, 340 U.S. 416 (hereinafter sometimes referred to as the second *Amalgamated* decision), where the Court ruled that, although there were live issues in companion cases, the cause presented could not be considered on the merits, having become moot. In that case, review was sought of an arbitration award granted under the terms of the Wisconsin Public Utility Anti-Strike Law. The award had a statutory time limitation of one year. A unanimous Court ruled (l.c. 418):

> "We are informed that this award was superseded by agreement, and, in any event, the one-year period has elapsed. There being no subject matter upon which the judgment of this Court can operate, the cause is moot.
>
> "It is argued that the Wisconsin courts have adopted a practice of deciding questions of importance even though the case has become moot, and we are urged to follow the same practice. But whatever the practice in Wisconsin courts, 'A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it (citing).'"

The Court distinguished the companion cases, upon which it reached the merits, by stating (l.c. 417, note 1):

> "It has been argued that No. 329 and No. 438 are moot by reason of the settlement of the immediate dispute which led to the strike action in each case. The injunction before us in No. 329 is 'perpetual' by its terms so that the action does not become moot, even though the decree be obeyed (citing). As to No. 438, the judgment below imposes fines upon petitioners. No question of mootness can be raised so long as enforcement of that judgment is sought."

Note particularly the clear implication in the footnote that the issue in the companion case, No. 329, would have been rendered moot if the injunction had not been perpetual. In the present case, the injunction, like the arbitration award in the second *Amalgamated* case which was ruled moot, expired by its own terms.

Neither penalties nor seniority rights turn on the validity of the injunction. The imposition of penalties and possible loss of seniority would result from violation of duties arising upon seizure, not from violation of the injunction subsequently sought and obtained. Section 295.200, RSMo 1949.

This case is clearly rendered moot under the ruling in the second *Amalgamated* case. The live issue of penalties in the companion case now pending may be litigated and reviewed in appropriate manner, as was done in the *Amalgamated* litigation, but this fact does not preserve questions which are otherwise rendered moot.

A second controlling decision is *Harris* v. *Battle*, 348 U.S. 803, involving mootness of a proceeding to test the validity of the seizure provisions of the Virginia counterpart of the King-Thompson Act. After an agreement between the Union and the Company, and the termination of seizure, the trial court in Virginia nevertheless decided on the merits that the act was constitutional (*Harris* v. *Battle*, 32 LRRM 83), but the Supreme Court of Virginia

held that the case had become moot (*Harris* v. *Battle*, 195 Va. lxxxviii, 34 LRRM 2793), and this Court agreed (348 U.S. 803).

The principal procedural difference between this case and the *Harris* case is that the State here sought an injunction to effectuate the purposes of the act, while in *Harris* the union officials sought to enjoin operation of the Virginia statute. Appellants do not claim this is a substantial distinction. They claim that the difference lies in the consequences of seizure under Missouri and Virginia law, and hark back to the question of penalties and loss of seniority, which the Missouri court declined to consider, and which would only give life to companion cases. Appellants further claim that questions of public importance are here involved which it is desirable to have answered, seemingly without regard to whether there is a ripe controversy between the parties. This contention was answered by the Court in the second *Amalgamated* opinion, quoted above, and did not persuade the Court in *Harris* v. *Battle*, *supra*.

It is unnecessary to wander afield in a general survey of the law of mootness when the *Amalgamated* and *Harris* decisions so closely govern the issue. It is submitted that the Court is foreclosed by its rulings in these cases from reaching the merits of this injunction suit.

II. The King-Thompson Injunction Procedure Should Be Sustained As a Valid Exercise of the State's Police Powers, Not Inconsistent with Federal Legislation.

A. The Amalgamated Decision Does Not Require a Pre-emption Ruling in This Case.

Appellants contend that this case is controlled by *Amalgamated Ass'n* v. *Wisconsin Employment Relations*

Board, 340 U.S. 383, which invalidated the Public Utility Anti-Strike Law of Wisconsin, in litigation involving a perpetual injunction and fines imposed for contempt of court. This decision was rendered in the companion cases referred to in the footnote of the similarly-styled case which this Court ruled moot, 340 U.S. 416. The opinion of the Missouri Supreme Court (R. 338) provides a closely-reasoned answer to appellants' contention, and if elaboration is desirable, undoubtedly the State will supply it. Summarily, it may be stated that after reviewing the history of the King-Thompson Act as an exercise of the State's police powers, and as a necessary adjunct to the Public Service Commission Act (Chapter 386, RSMo 1949) which requires public utilities to render continuous, safe and adequate service, the Missouri Supreme Court noted that the Wisconsin statute provided compulsory arbitration in non-emergency situations, which this Court found to be inconsistent with the Taft-Hartley Act, while the statute at bar does not provide compulsory arbitration, deals only with local emergencies, preserves collective bargaining, and complements the federal law. The Missouri Supreme Court held that there is nothing in the federal legislation or in the decisions of this Court which would establish an unconditional right to strike, regardless of the consequences and circumstances, and that recognized restrictions on the right, established by local law and consistent with federal law, could be applied by analogy to sustain the King-Thompson Act.

The majority opinion of Mr. Chief Justice Vinson in the *Amalgamated* decision, *supra*, clearly anticipated the distinction which is here urged, when he stated (l.c. 393-394), "the Wisconsin Act before us is not 'emergency' legislation . . . . Far from being limited to 'local emergencies,' the act has been applied to dispute national in scope.

and application of the act does not require the existence of an 'emergency.'" In footnote 19, the Chief Justice continued (l.c. 394), "Far from being legislation aimed at 'emergencies,' the Wisconsin Act has been invoked to avert a threatened strike of clerical workers of a utility (citation)." The majority opinion was also careful to point out (l.c. 398-399) the inconsistency between the federal duty to continue collective bargaining and the state invocation of compulsory arbitration to resolve an "impasse." It would not be safe to assume, as appellants do, that these considerations, entering into the majority opinion in *Amalgamated*, and absent in the present case, were not decisive in the thinking of those who constituted the majority of the Court in 1951. It is entirely consistent to concur in the *Amalgamated* decision and to sustain the King-Thompson Act.

Subsequent to the decision of the Missouri Supreme Court, powerful additional support has been given to an interpretation of the *Amalgamated* decision which would limit its application to instances which are clearly inconsistent with federal labor legislation, and which would permit legislation of the type enacted by the State of Missouri. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236. The decision itself merely held that a State court could not award damages for picketing which it could not enjoin. As noted in the concurring opinion, however (l.c. 250), the majority took the occasion to make a declaration of law which "will stand as a landmark in future 'pre-emption' cases in the labor field."

The majority opinion of Mr. Justice Frankfurter repeats prior declarations of the Court that (l.c. 240) ". . . the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much . . .'" The majority opinion further states (l.c.

243-244) "due regard for the presuppositions of our embracing federal system . . . has required us not to find withdrawal from the states of power to regulate . . . where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling Congressional direction, we could not infer that Congress had deprived the States of the power to act." A similar thought is developed further in the *Garmon* opinion, where Mr. Justice Frankfurter states (l.c. 247), ". . . the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed Congressional direction."

The author of the *Garmon* opinion was very clearly recognizing local authority over both "violence" and other "imminent threats to the public order," such as are likely in an emergency situation arising during a strike in a public utility. This is apparent in Mr. Justice Frankfurter's use of reasoning almost identical to that in *Garmon* in his minority opinion dealing with the State of Wisconsin's Public Utility Anti-Strike Law, where he stated: "Due regard for the basic elements in our federal system makes it appropriate that Congress be explicit if it desires to remove from the orbit of State regulation matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests . . . I find no indication in the (federal) statute that the States are not equally free to protect the public interest in State emergencies." *Amalgamated Ass'n v. Wisconsin Employment Relations Board*, 340 U.S. 383, 403-404, 409. It would appear from *Garmon* that the majority of the Court is now prepared to accept at least this much of the reasoning expressed by Mr. Justice Frankfurter in his dissent in the *Amalgamated* case. The *Gar-*

mon decision is authority for the proposition that the States may exercise the police powers where, as here, there are "imminent threats to the public order" and "compelling state interest . . . in the maintenance of domestic peace." It is difficult to imagine a stronger case than the present one, in the labor-management field, which is as "deeply rooted in local feeling and responsibility," and which therefore resists application of a doctrine resulting in local disability.

It may perhaps be argued from the ruling in *Garmon* that the Labor Board should have primary jurisdiction to determine whether strikes in public utilities create local emergencies and, if so, whether they are nevertheless protected by the federal law. This would, however, be a perversion of the *Garmon* decision, where, as in an economic strike against a public utility, there is no arguable basis for filing an unfair labor practice charge, and thus no statutory method of reaching the Board for decision. It would be patently unsound to concede on the one hand that Congress left the States free to deal with local emergencies, but to hold on the other hand that the determination of whether or not there was such an emergency must be withheld in deference to the expertise of the Labor Board, when Congress has failed to provide a statutory method by which that expertise could be exercised.

It thus appears, from the most recent pronouncement of this Court, as well as from the reasons developed prior thereto, that the *Amalgamated* decision is not so far-reaching as to require the invalidation of the King-Thompson Act, and that the act, as applied in this case, is a proper exercise of the State's police powers, and is not affected by federal legislation.

B. Legislative History Favors Validity of the King-Thompson Act.

Appellants argue that Congress has "approved and reenacted the rule of the *Amalgamated* case—that states may not curtail the right to strike of employees of local public utilities over which the Board asserts jurisdiction." (Brief for Appellants, page 29). They rely on (1) Senate rejection of the Holland amendment, which would have given express authority to the States to regulate, qualify or prohibit strikes by employees of public utilities and (2) the adoption of an amendment to the Taft-Hartley Act which dealt with federal-state jurisdiction and ceded complete jurisdiction to the States in certain instances but which did not treat the issue here, where there is concurrent jurisdiction over the industry involved.

The amendment to Taft-Hartley was contained in Section 701 (a), Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257. The adoption by Congress of this amendment in which, in the words of Senator Carroll (105 Cong. Rec. 16416) "for the first time —we begin to *soften* the so-called doctrine of pre-emption" cannot reasonably be the occasion for claiming that all pre-emption decisions not touched by Congress were automatically reaffirmed, and all pre-emption questions not treated were ruled in favor of federal control.

The rejection of the Holland amendment in 1958 (104 Cong. Rec. 9995) and again in 1959 (105 Cong. Rec. 6044) might lead to inferences favorable to appellants' claim, if it were not for the debates leading up to the votes, which are fatal to the contention made by appellants.

The 1958 debate is full of criticism of the *Amalgamated* decision by Senators who nevertheless voted against the amendment, with only Senator Morse making a brief argu-

ment against the amendment, on the merits. Even Senator Morse's argument was directed against compulsory arbitration (104 Cong. Rec. 9991, 9993) rather than against the type of provision contained in the King-Thompson Act. He stated (l.c. 9991) "I think there are alternative procedures for handling public utility strikes," and certainly took no such extreme position as appellants seem to urge, which would establish an unconditional right to disrupt public services.

The spokesmen for the opposition to the Holland amendment opposed it on the ground that it was not pertinent to the pending legislation, had not been fully considered in committee, or was "controversial," but almost every one asserted that he favored state regulation of public utility strikes. Typical of the opposition comments are those of Senator Ervin, who asserted the view (l.c. 9990), that the majority opinion in *Amalgamated* "misconstrued" Taft-Hartley, and said, "I am strongly in favor of the enactment of a law which will carry out the objective of (this) amendment."

In the 1959 debate on the Holland amendment, an opposition spokesman, Senator Goldwater, expressed "sympathy" for the purposes of the amendment, but contended that its adoption "could open up the Taft-Hartley Pandora's box" (105 Cong. Rec. 6043). Senator Kennedy indicated that the amendment would permit state action which would exceed justified restraints on crippling strikes in public utilities, and questioned the public necessity of a limitation on the right to strike against public transportation systems, or when a stoppage of electric power would merely affect farming operations (l.c. 6043). Appellants quote a portion of Senator Kennedy's remarks, but omit the following significant statement which demonstrates an attitude completely contrary to that which

might be inferred from the partial-quote appearing in appellants' brief (page 28): "I do not believe that that (agricultural) case warrants acceptance on the floor of the Senate of what is in effect a measure of compulsory arbitration, particularly when the courts have the power to act in cases in which the health, safety, and basic welfare of the citizens of the State are at stake. The courts have been given by the States the power to seize industries to protect the public health and safety." (105 Cong. Rec. 6043). This statement was made by Senator Kennedy on April 25, 1959, five days after this Court's decision in the *Garmon* case, and it would strongly appear that the Court's reasoning in that landmark decision on pre-emption was the source of Senator Kennedy's interpretation of the pre-emption rule, which is essentially identical with the interpretation here suggested. Thus, far from "reaffirming" the *Amalgamated* decision and extending its application, Congressional sources cut the ground from under appellants' argument.

It is submitted that extension of the *Amalgamated* doctrine to invalidate the King-Thompson Act would be contrary to Congressional intent as well as the *Garmon* decision, and would completely ignore the legitimate interests of the State of Missouri, where the House of Representatives this year defeated a serious effort to repeal the King-Thompson Act by a vote of 92 to 50. House Journal, 70th General Assembly, page 298 (February 10, 1959).

C. The Amalgamated Decision Should Be Overturned If It Necessarily Invalidates the King-Thompson Act.

Argument has heretofore been made that appellants are urging a wholly unwarranted extension of the *Amalgamated* decision, which would cripple local authorities

in the exercise of the police power, in a manner which is not required by federal legislation and would in fact upset the division of state-federal responsibility in the labor field. If, however, there are members of the Court who have difficulty squaring the King-Thompson Act, as applied in this case, with the *Amalgamated* decision, then it is respectfully urged that the principles announced in the *Amalgamated* decision should be reconsidered and overturned in the light of further experience and additional guides to Congressional intent.

In the *Amalgamated* decision, and particularly in footnote 21, the majority of the Court inferred that the sponsors of the Taft-Hartley Act, notably Senator Taft, were seeking to assure a federally-protected right to strike in public utilities, and were not merely by-passing this question as a matter of federal law, thus leaving the States free to regulate labor disputes of essentially local concern, consistently with the federal scheme. The dissenting opinion in *Amalgamated* refused to accept this interpretation of Senator Taft's comments (l.c. 403-404), and it can now be determined that the minority opinion correctly viewed the legislative intent of Taft-Hartley's sponsors.

Professor Paul R. Hays of Columbia University, in an article entitled "Federalism and Labor Relations in the United States," 102 Univ. of Pa. L. Rev. 959 (1954), concluded that the legislative history of the Wagner and Taft-Hartley Acts might be summarized as follows (l.c. 965-966):

> "If congressional 'intent' concerning state regulation of labor relations may be derived not only from the express comments on particular aspects of the problem but also from the attitude of Congressmen in general, then the legislative history of the two acts

> taken as a whole and the comments of the senators at the 1953 hearing on proposed amendments support the contention that Congress intended to supplement state regulations rather than to displace it. For example, Mr. Hartley said (in 1947), in answer to a question about the effect of the federal act on Wisconsin Law: '. . . this will not interfere with the State of Wisconsin in the administration of its own laws.' (citation). Senator Taft said (in 1953): 'I may say that we never intended any pre-emption of the field. The Supreme Court has gone beyond what we intend.' (citation). 'In general, I am quite willing to leave to the states the control of anything that we can do.' (citation). 'Of course, I do not offhand see why the states cannot handle a local public utilities strike, a street car strike, or anything else, as well as the Federal Government.' (citation)."

Professor Hays continued (l.c. 968):

> "The Court has held that, where the Congress chose to regulate strikes which create a national emergency, its rejection of proposed legislation which would have regulated local emergencies as well indicates an intention that local emergencies should be 'unregulated.' (citation of *Amalgamated* case). It seems much more likely that Congress 'intended' to leave such regulation to the states."

Likewise, Professor Bernard D. Meltzer of The University of Chicago, in an article entitled "The Supreme Court, Congress and State Jurisdiction Over Labor Relations," Special Supplement, The University of Chicago Law School Record (1958), 95, suggested (l.c. 98) that in the *Amalgamated* decision "an abstract formula became controlling despite the fact that such a formula could not be supported in terms of either a plainly expressed legislative purpose or the consequences produced in concrete situations." Professor Meltzer compared "the Court's

sanction of state power over 'violence' on the picket line" with its apparent "denial of state power to maintain the flow of essential services," and commented (l.c. 98):

> "Plainly a breakdown in such services could enormously increase and complicate the problem of preserving order. Furthermore, such a breakdown posed at least as serious a problem for local authorities as a breach in the etiquette of picketing."

Finally, in the debates on the Holland amendment, Senator Holland reported (104 Cong. Rec. 9984) that Senator Taft "made no secret of his complete disagreement with the majority opinion" in the *Amalgamated* case which had relied heavily upon the supposed support of the principal sponsor of the Taft-Hartley Act.

It is submitted that strict adherence to the doctrine of *stare decisis* would require a finding that the issues which appellants seek to litigate in this appeal have become moot, and that appellants should be directed to rely on the pending companion litigation relating to penalties in order to gain a resolution of the questions which they want answered. If, however, the Court should find occasion to reach the merits of this case, contrary to its practice heretofore discussed, and if the Court should also conclude that the current validity of the *Amalgamated* principle is decisive, it is respectfully submitted that the Court should then depart from precedent on the substantive, as well as the procedural, question, and should abandon the first, as well as the second, *Amalgamated* decision, in the light of experience and additional guides to legislative intent.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Court should rule the issues in this case moot, or should affirm the judgment below, on the ground that "the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling Congressional direction (the Court) could not infer that Congress had deprived the States of the power to act."

Respectfully submitted.

IRVIN FANE

HARRY L. BROWNE

HOWARD F. SACHS,

Attorneys for Kansas City Power & Light Company.

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FILED
OCT. 3 1959
JAMES R. BROWNING, Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,
vs.
MISSOURI.

Appeal from the Supreme Court of the State of Missouri.

MOTION

Of the Chamber of Commerce of Metropolitan St. Louis for Leave to File a Brief as Amicus Curiae.

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SUPREME COURT OF THE UNITED STATES.

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MISSOURI.

Appeal from the Supreme Court of the State of Missouri.

MOTION

Of the Chamber of Commerce of Metropolitan St. Louis for Leave to File a Brief as Amicus Curiae.

Now comes the Chamber of Commerce of Metropolitan St. Louis and respectfully moves this Court, pursuant to 42 (3) of the Rules of this Court, for leave to file a brief in this case *amicus curiae*. The consent of the attorney for the appellee herein to the filing of a brief *amicus curiae* was obtained, but the consent of the attorney for appellants was refused. The interest of the St. Louis Chamber of Commerce and its reasons for asking for leave to file a brief *amicus curiae* are set forth below.

Movant is a corporation organized under the laws of the State of Missouri and has as its purpose the promotion of the commercial, industrial, financial, business, cultural, educational and civic interests and general welfare of the public of St. Louis and of the St. Louis Metropolitan area. Movant is not a pecuniary profit earning corporation. Movant has as its members numerous firms and individuals representing the commercial, industrial, financial and business interests of the City of St. Louis.

Movant desires that it be allowed to file a brief in this cause in order that the Court may have before it the point of view of the business interests in St. Louis toward the validity of the King-Thompson Act which is under attack in this case. Many of movant's members are users of gas and are dependent upon it for the operation of their businesses. Since this case involves the power of the State of Missouri, under certain circumstances, to take possession of a public utility distributing gas to many businesses all over the City of St. Louis, the movant is vitally interested in the outcome of this litigation.

The appellee in this case, the State of Missouri, represents the public at large and therefore cannot adequately present the facts or the law of this case as they apply specifically to the business interests in the City of St. Louis. The movant believes that it should be allowed to file a brief emphasizing from a business management standpoint the factual and legal aspects of the question of the power of the State of Missouri to take possession of a public utility company after a strike has been declared and an emergency situation exists which seriously affects the operation of businesses throughout the community. Such a brief would analyze the relevancy of the factual existence of an emergency situation in determining the power of a State, under the police power, to take possession of a public utility. The Court in prior decisions has noted the relevancy of the existence of an emer-

gency in determining the proper limits of State power. **Allen-Bradley Local v. Wisconsin Board**, 315 U. S. 740, 748-749 (1942); **International Union, United Auto Workers v. Wisconsin Board**, 336 U. S. 245, 252-265 (1949); **Auto Workers v. Wisconsin Board**, 351 U. S. 266, 274-275 (1956); **Youngdahl v. Rainfair**, 355 U. S. 131, 138 (1957). And see **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board**, 340 U. S. 383, 393-396, 406-407 (1951).

It is respectfully submitted that the welfare of the business interests of St. Louis are vitally at stake in this litigation and that therefore movant should be allowed to present the viewpoint of business toward the issues presented by this case.

Respectfully submitted,

COBURN & CROFT,

.....

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MOTION FILED OCT 2 5 1959

No. 42.

In the Supreme Court of the United States

October Term, 1959.

LOCAL No. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*,

vs.

STATE OF MISSOURI.

On Appeal from the Supreme Court of Missouri.

MOTION OF MISSOURI STATE CHAMBER OF COMMERCE, THE CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI, THE MISSOURI FARM BUREAU FEDERATION, THE CHAMBERS OF COMMERCE OF ST. JOSEPH, SPRINGFIELD AND JOPLIN, MISSOURI, FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*.

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In the Supreme Court of the United States

October Term, 1959.

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LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*,

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On Appeal from the Supreme Court of Missouri.

MOTION OF MISSOURI STATE CHAMBER OF COMMERCE, THE CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI, THE MISSOURI FARM BUREAU FEDERATION, THE CHAMBERS OF COMMERCE OF ST. JOSEPH, SPRINGFIELD AND JOPLIN, MISSOURI, FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*.

The Missouri State Chamber of Commerce, the Chamber of Commerce of Kansas City, Missouri, the Missouri Farm Bureau Federation and the Chambers of Commerce of the cities of St. Joseph, Springfield and Joplin, Missouri, hereby respectfully move this Court for leave to file the accompanying brief as *amici curiae* in this cause. The

consent of Counsel for appellee to the filing of this brief was obtained, but Counsel for appellants have withheld their consent.

The Missouri State Chamber of Commerce represents and includes within its membership, individuals and business organizations in virtually all lines of endeavor throughout the State of Missouri. Its membership includes 114 local Chambers of Commerce and similar organizations and trade associations. Included in the membership of the Missouri Farm Bureau Federation are farmers, cattlemen and organizations both business and civic concerned with agriculture. The Chamber of Commerce of Kansas City, Missouri, and the Chambers of Commerce of St. Joseph, Springfield and Joplin, Missouri, include among their members, many thousands of individuals and business organizations in varied commercial and industrial fields in the four largest cities in Western Missouri. Your Movants are all non-profit organizations. Their purposes and functions are to promote the general public interest and welfare and to protect the interest of their members through many civic, educational, cultural and industrial programs.

Movants are vitally concerned and interested in the cause. Their members span commerce, industry and agriculture. They include small-town merchants and large industrial corporations. They include professional men and farmers, and these members, small or large, urban or rural, are all dependent upon the constant flow of the essential utility services.

Many utilities, supplying vital public services, are members of and represented by Movants. Other members are involved in a multitude of diverse activities requiring constant public utility service. Many companies and businesses, represented by movants, employ and bargain col-

lectively with union labor. As citizens and workers, these employees likewise have an undeniable interest through their employers in this matter.

Movants, representing various citizens in industry, commerce and agriculture in the State of Missouri, assert that a fair and correct construction of applicable state and federal statutes gives Movants, their members and those dependent upon them, the right to rely upon the emergency relief afforded by Chapter 295, Mo. Rev. Stat. (1949), where the public interest, health and welfare are jeopardized. Movants, therefore, ask leave to file the accompanying brief, and in support thereof state:

1. The appellee in this case is the State of Missouri. While representing the state most competently, the Attorney General, nevertheless cannot be fully cognizant of the experience, views and beliefs of business men and farmers. There are a number of issues present in this matter to which appellee must devote considerable attention, as for example, the question of jurisdiction, reserved by this Court in its order of May 4, 1959. One of the crucial issues is whether conflict exists between the Missouri and federal law, whether the Missouri law as applied in this case can stand together with the federal law and whether state jurisdiction in this case should be upheld because of an overriding and compelling state interest in the maintenance of domestic peace. Much of the brief of the State of Missouri before the Supreme Court of Missouri in this case was devoted to other arguments. In the opinion of your Movants, this issue, so vital to management and labor, will not be adequately presented by the State of Missouri.

2. In the accompaning brief, your Movants have set forth very basic differences between the facts and the statute involved in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951), and the case at issue. In

addition, Movants bring to the Court's attention the analysis and application of the principles which should control this case—those principles that have gathered light from the decisions handed down by this high Court in federal-state jurisdiction disputes since the decision in the *Amalgamated* case. The analysis of these decisions by appellee in its brief before the Supreme Court of Missouri was not fully developed and your Movants have no reason to believe that appellee's arguments on this point will be expanded or made more complete in this Court.

3. While this case grows out of a certain dispute in the St. Louis area, the future impact of this Court's opinion, can and will affect labor, management, and the public over the entire state. A full and complete hearing by this Court requires a review of Movant's brief.

4. Permission to Movants, to file the accompanying brief as *amici curiae*, will neither delay this matter nor prejudice the adjudication of the rights of the original parties hereto.

Your Movants firmly believe in and support the rights of employees to organize and to bargain collectively through representatives of their own choosing. They believe in and support the right of employees to withhold their labor and to engage in peaceful concerted activities for their mutual interest and self protection. However, Movants also firmly believe that the disruption of vital utility services in a labor dispute can create an overriding public interest and that neither management nor labor can force the granting of demands at the expense of the public peace, welfare and safety.

For all of these reasons, your Movants respectfully request permission to file the accompanying brief as *amici curiae* to urge the affirmance of the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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Of Counsel.

October, 1959

SUPREME COURT OF THE UNITED STATES

No. 42.—October Term, 1959.

Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., Appellants. v. Missouri.	On Appeal From the Supreme Court of Missouri.

[January 25, 1960.]

Mr. Justice Stewart delivered the opinion of the Court.

This is an appeal from a judgment of the Supreme Court of Missouri affirming a decree which enjoined the appellants from continuing a strike against a St. Louis public utility. The judgment upheld the constitutionality of certain provisions of a Missouri law, commonly known as the King-Thompson Act, which authorizes the Governor on behalf of the State to take possession of and operate a public utility affected by a work stoppage when in his opinion "the public interest, health and welfare are jeopardized," and "the exercise of such authority is necessary to insure the operation of such public utility."[1]

In the state courts and in this Court the appellants have contended that the Missouri law conflicts with federal legislation enacted under the Commerce Clause of the Federal Constitution, and that it violates the Due Process Clause of the Fourteenth Amendment. Because of doubt as to whether the controversy was moot, we postponed further consideration of the question of jurisdiction to the hearing of the case on the merits. 359 U. S. 982.

[1] The King-Thompson Act is Chapter 295 of the Revised Statutes of Missouri, 1949. The section of the statute which authorizes seizure by the Governor on behalf of the State is Mo. Rev. Stat., 1949, § 295.180.

The appellants are labor unions which represent employees of the Laclede Gas Company, a corporation engaged in the business of selling natural gas in the St. Louis area. In the spring of 1956 the appellants notified Laclede of their desire to negotiate changes in the terms of the collective bargaining agreement which was to expire in that year. Extended negotiations were conducted, but no new agreement was reached, and upon expiration of the existing contract on June 30, 1956, the employees went out on strike.[2]

Five days later the Governor of Missouri issued a proclamation stating that after investigation he believed that the public interest, health, and welfare were in jeopardy, and that seizure under authority of the state law was necessary to insure the company's continued operation. In an executive order issued the same day the Governor took "possession" of Laclede "for the use and operation by the State of Missouri in the public interest." A second executive order provided that all of the "rules and regulations . . . governing the internal management and organization of the company, and its duties and responsibilities shall remain in force and effect throughout the term of operation by the State of Missouri."

After the seizure the appellants continued the strike in violation of the statute,[3] and the State of Missouri filed suit for an injunction against them in the Circuit Court

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[2] All employees represented by the appellants, approximately 2,200, participated in the strike; approximately 300 supervisors and others not in the bargaining units, represented by the appellants remained at work.

[3] Missouri Rev. Stat., 1949, § 295.200 (1), provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state."

of St. Louis.[4] At the end of a three-day hearing the trial court entered an order enjoining the appellants from continuing the strike, and in an amendment to the decree declared the entire King-Thompson Act constitutional and valid. On July 14, 1956, the day after the injunction issued, the strike was terminated. On August 10, 1956, the appellants and Laclede signed a new labor agreement, and on October 31, 1956, the Governor ended the seizure.

On appeal the Supreme Court of Missouri, although noting that the injunction had "expired by its own terms," nevertheless proceeded to consider the merits of certain of the appellants' contentions. The court restricted its consideration, however, to those sections of the King-Thompson Act "directly involved"—"Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 295.200, RSMo, V.A.M.S., making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means."[5] 317 S. W. 2d, at 316. In upholding the constitutionality of these sections of the Act, the court explicitly declined to pass on other provisions which the appellants sought to attack, stating: "The sections which we have considered are severable from and may stand independently of the remainder of the Act. Although the defendants argue strenuously to the contrary, no case is made in this record for determination of the constitutionality of section 295.090, pertaining to a written labor agreement of a minimum duration, and section 295.200, subparagraphs 2, 3, 4, and 5, relating to monetary penalties and loss of seniority. We therefore refrain from expressing any opinion with reference

[4] Missouri Rev. Stat., 1949, § 295.200 (6), provides: "The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder."

[5] See notes 1, 3 and 4, *supra*.

thereto." 317 S. W. 2d, at 323. Accordingly, the court "limited and modified" the judgment of the trial court so as to remove all possible intimation that any provisions of the Act had been held constitutional other than those necessarily upheld in sustaining the validity of the injunction."

Because that injunction has long since "expired by its own terms," we cannot escape the conclusion that there remain for this Court no "actual matters in controversy essential to the decision of the particular case before it." *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, 116. Whatever the practice in the courts of Missouri, the duty of this Court "is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills* v. *Green*, 159 U. S. 651, 653. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416. To express an opinion upon the merits of the appellants' contentions would be to ignore this basic limitation upon the duty and function of the Court, and to disregard principles of judicial administration long established and repeatedly followed.[2]

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[1] The court did reaffirm an earlier decision (*State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244 S. W. 2d 75) upholding the constitutionality of provisions of the King-Thompson Act relating to the State Board of Mediation and public hearing panels, to the extent that those sections are a necessary predicate for the additional sections with which we are now concerned. 317 S. W. 2d, at 315.

[2] See, *e. g.*, *Singer Mfg. Co.* v. *Wright*, 141 U. S. 696; *California* v. *San Pablo & Tulare R. Co.*, 149 U. S. 308; *Mills* v. *Green*, 159 U. S. 651; *American Book Co.* v. *Kansas*, 193 U. S. 49; *United States* v. *Hamburg-American Co.*, 239 U. S. 466; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *United States* v. *Alaska S. S. Co.*, 253 U. S. 113; *Brownlow* v. *Schwartz*, 261 U. S. 216; *Alejandrino* v. *Quezon*, 271 U. S. 528; *Barker Co.* v. *Painters Union*, 284 U. S. 462.

In *Harris* v. *Battle*, 348 U. S. 803, these principles were given concrete application in a context so parallel as explicitly to control disposition of the primary issue here. That case originated as an action to enjoin the enforcement of a Virginia statute, markedly similar to the King-Thompson Act, under which the Governor had ordered that "possession" be taken of a transit company whose employees were on strike. Although the labor dispute was subsequently settled and the seizure terminated, the trial court nevertheless proceeded to decide the merits of the case, holding that the seizure was constitutional. *Harris* v. *Battle*, 32 L. R. R. M. 83. The Virginia Supreme Court refused an appeal. *Harris* v. *Battle*, 195 Va. lxxxviii. In this Court it was urged that the controversy was not moot because of the continuing threat of state seizure in future labor disputes.[4] It was argued that the State's abandonment of alleged unconstitutional activity after its objective had been accomplished should not be permitted to forestall decision as to the validity of the statute under which the State had purported to act.[5] It was contended that the situation was akin to cases like *Southern Pac. Terminal Co.* v. *Interstate Commerce Comm'n*, 219 U. S. 498, 514–516.[6] In finding that the controversy was moot, the Court necessarily rejected all these contentions. 348 U. S. 803. Upon the authority of that decision the same contentions must be rejected in the present case. See also *Barker Co.* v. *Painters Union*, 281 U. S. 462; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360.

However, as the appellants point out, the decision in *Harris* v. *Battle* is not completely dispositive here because, unlike the Virginia statute, the King-Thompson Act con-

[4] See jurisdictional statement in *Harris* v. *Battle*, No. 111, O. T. 1954, pp. 12–13.

[5] *Ibid.*

[6] *Ibid.*

tains provisions which impose: (1) monetary penalties upon labor unions which continue a strike after seizure;[11] and (2) loss of seniority for employees participating in such a strike.[12] The Missouri court found that these separable provisions of the Act were not involved in the present case, and it carefully refrained from passing on their validity.[13] The court noted that liability for monetary penalties had been asserted in a separate lawsuit, 317 S. W. 2d, at 314, and the parties have informed us that the action is still pending in the state courts.

We cannot agree that the pendency of that litigation gives life to the present appeal. When that claim is litigated it will be subject to review, but it is not for us now to anticipate its outcome. "'Constitutional questions are not to be dealt with abstractly' . . . . They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us. . . . Nor will we assume in advance that a State will so construe its law as to bring it into conflict with the federal Con-

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[11] Missouri Rev. Stat., 1949, § 295.200 (3), provides: "Any labor organization or labor union which violates paragraph 1 of this section shall forfeit and pay to the state of Missouri for the use of the public school fund of the state, the sum of ten thousand dollars for each day any work stoppage resulting from any strike which it has called, incited, or supported, continues, to be recovered by civil action in the name of the state and against the labor organization or labor union in its commonly used name."

[12] Missouri Rev. Stat., 1949, § 295.200 (2), provides: "It shall be unlawful for any public utility to employ any person or employee who has violated paragraph 1 of this section except that such person or employee may be employed only as a new employee."

[13] See p. —, *supra*. Since neither the statutory penalties nor possible loss of seniority turn on the validity of the injunction, this case is quite unlike *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, where the very judgment in controversy imposed financial liability. Nor did this case involve a "perpetual" injunction. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416, n., at 417–418.

stitution or an act of Congress." *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, at 746.

The guiding principle is well illustrated in *American Book Co.* v. *Kansas*, 193 U. S. 49. There the Kansas Supreme Court had ousted the appellant from doing business in the State until it complied with provisions of the local law governing foreign corporations. Pending appeal the appellant satisfied the judgment by complying with the requirements of the statute. But meanwhile the State had brought another action against the appellant to void contracts it had made prior to the date of its compliance. Because of this pending litigation the appellant argued that "'there still exists a controversy, undetermined and unsettled,' involving the right of the State to enforce the statute against a corporation engaged in interstate commerce." 193 U. S., at 51. What the Court said in rejecting that argument and dismissing the appeal as moot is entirely relevant here. "[T]hat suit is not before us. We have not now jurisdiction of it or its issues. Our power only extends over and is limited by the conditions of the case now before us." 193 U. S., at 52. See *Alejandrino* v. *Quezon*, 271 U. S. 528.

The asserted threat to the seniority rights of Laclede employees is even more speculative. Almost four years have passed since the strike, and the appellants concede that no action has been taken to deprive any employees of their seniority. Moreover, the section of the Act which relates to seniority rights imposes no legal sanctions on the employees or their unions, but makes unlawful only the action of the utility company which rehires the employees without loss of seniority.[14] In the unlikely event that a legal proceeding should now be brought against Laclede for having done so, there is no way to

[14] See note 12, *supra*.

know what the outcome of such a proceeding in the Missouri courts might be.[1]

The decision we are asked to review upheld only the validity of an injunction, an injunction that expired by its own terms more than three years ago. Any judgment of ours at this late date "would be wholly ineffectual for want of a subject matter on which it could operate. An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other. To adjudicate a cause which no longer exists is a proceeding which this Court uniformly has declined to entertain." *Brownlow v. Schwartz*, 261 U. S. 216, 217–218.

The judgment of the Supreme Court of Missouri is vacated, and the cause is remanded for such proceedings as by that court may be deemed appropriate.

Vacated and remanded.

[1] The appellee asserts and the appellants do not deny that the statute imposes no penalty for violation of the seniority provisions.

SUPREME COURT OF THE UNITED STATES

No. 42.—October Term, 1959.

Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., Appellants, v. Missouri.	On Appeal From the Supreme Court of Missouri.

[January 25, 1960.]

Mr. Justice Black, whom The Chief Justice and Mr. Justice Brennan join, dissenting.

We think this controversy is not moot. As the Court's opinion points out, the petitioner union may still be held liable for monetary penalties and its members may lose seniority because of the strike the Missouri Supreme Court held illegal under state law. Its holding was made long after the strike had ended. It was moot then if it is moot now. But the state court treated it as a live controversy and so should we. Otherwise, the petitioner union and its members stand constantly under threats of penalties and continuing injunctions under the state statute the Missouri Supreme Court held validly applied in this case.

The wrongfulness in holding the case moot is emphasized by our belief that the state court was plainly without any jurisdiction over this controversy unless the Court wants to overrule *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, and adopt the views of the three dissenters in that case. We would follow that holding and reverse this case on the merits.